

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

Docket No. 76-7377

IN THE
United States Court of Appeals
For the Second Circuit

SAMUEL ROBINSON AND FACULTY ASSOCIATION OF ADIRONDACK COMMUNITY COLLEGE,

Plaintiffs-Appellants,

— vs. —

HOMER P. DEARLOVE, CHAIRMAN, MERRITT E. SCOVILLE,
DURWARD D. WEAVER, JOHN GOETZ, LESLIE BRISTOL, JOHN
J. CASTLE, JACQUES GRUNBLATT, J. WALTER JUCKETT, and
JOSEPH RANGLES, as the Board of Trustees of Adirondack Community College,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of New York

JOINT APPENDIX

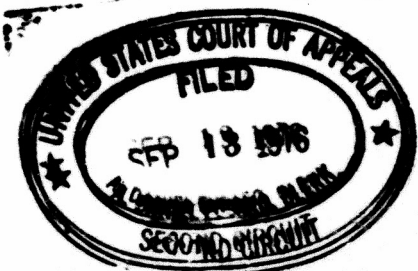
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PLAINTIFFS

ROBINSON, SAMUEL and FACULTY
ASSOCIATION OF ADIRONDACK COMMUNITY
COLLEGE

DEFENDANTS

DEARLOVE, HOMER P., Chairman;
SCOVILLE, MERRITT E.; WEAVER,
DURWARD D; GOETZ, JOHN; BRISTOL,
LESLIE; CASTLE, JOHN J.; GRUN-
BLATT, JACQUES; JUCKETT, J. WALTER;
AND RANGLES, JOSEPH, as the Board
of Trustees of Adirondack Commu-
ity College

CAUSE Breach of Contract, etc.

76-CV- 3

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(For Dearlove, Scoville, Weaver &
Goetz)

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	DATE	RECEIPT NUMBER	C. D. NUMBER	CARD	DATE MAILED
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	7/27/76	50477	113	JS-6	

DOCKET ENTRIES BELOW (N.D.N.Y.).

76-CV-3

DATE	NR	PROCEEDINGS
1976		
Jan. 6	1	Filed complaint-issued summons-orig. & 9 copies
Jan. 7		Delivered summons-orig. & 9 copies to the Marshal for service
Mar. 18	2	Filed Notice of Motion, returnable April 5, 1976 at Albany, Motion to Dismiss, Affidavit of Jed B. Wolkenbreit & Memorandum of Law
Apr. 5	3	Filed Amended Complaint
Apr. 5		Adjourned to May 3, 1976 by consent
Apr. 22	4	Filed Notice of Motion returnable May 3, 1976 at Albany & Supplementary Affidavit of Jed B. Wolkenbreit in support of Motion under Rule 12(b) together with affidavit of service by mail
May 3	5	Filed Plaintiff's Memorandum of Law in opposition to defendant's motion to Dismiss
May 3		Motion to dismiss the complaint, by defendants-Decision Reserved. 1 week for plaintiff to file brief. 1 week for defendant to reply.
June 4	6	Filed summons served 6/1/76 on J. Walter Juckett, served 4/8/76 on John J. Castle, unserved on Jacques Grunblatt, served 2/19/76 on Durward D. Weaver and John Goetz, served 2/5/76 on Merritt E. Scoville and Homer P. Dearlove, served 5/6/76 on Joseph Randles and Leslie Bristol
June 30	7	Filed Memorandum-Decision and Order of Judge Foley (6/29/76) granting the defendants motion to dismiss the amended complaint and dismissing the amended complaint
June 30	8	Filed Judgment and mailed cards, re: Judgment to Lipsitz, Greene, Fahringer, Roll, Schuller & James, Esqs. and Robert P. Roche, Esq.
July 27	9	Filed Notice of Appeal of plaintiffs
Aug. 3		Sent Certified copy of Record on Appeal to CCA, 2nd Cir.
Aug. 6	10	Filed receipt for papers sent to C.C.A.
Aug. 13	11	Filed Bond on Appeal

PLAINTIFFS' AMENDED COMPLAINT.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SAMUEL ROBINSON and FACULTY ASSOCIATION OF
ADIRONDACK COMMUNITY COLLEGE,

Plaintiffs

vs.

AMENDED COMPLAINT

Civ. Action No.
76-CV-3

HOMER P. DEARLOVE, Chairman; MERRITT E.
SCOVILLE; DURWARD D. WEAVER; JOHN GOETZ;
LESLIE BRISTOL; JOHN J. CASTLE; JACQUES
GRUNBLATT; J. WALTER JUCKETT; and
JOSEPH RANGLES, as the Board of Trustees
of Adirondack Community College,

Defendants.

Plaintiffs, by their attorneys, LIPSITZ, GREEN,
FAHRINGER, ROLL, SCHULLER & JAMES, for their amended com-
plaint against the defendants herein, allege as follows:

FIRST: Plaintiff SAMUEL ROBINSON is a citizen
of the United States and of the State of New York residing
within the jurisdiction of the United States District
Court for the Northern District of New York. Plaintiff
FACULTY ASSOCIATION OF ADIRONDACK COMMUNITY COLLEGE is an
employee organization authorized to represent employees of
Adirondack Community College in connection with their terms
and conditions of employment pursuant to the Civil Service Law
of the State of New York, Sections 200, et seq.

PLAINTIFFS' AMENDED COMPLAINT.

SECOND: Upon information and belief, defendants HOMER P. DEARLOVE, MERRITT E. SCOVILLE, DURWARD D. WEAVER, JOHN GOETZ, LESLIE BRISTOL, JOHN J. CASTLE, JACQUES GRUNBLATT, J. WALTER JUCKETT and JOSEPH RANGLES, are the Trustees of Adirondack Community College, a community college within the meaning of an established, operating and financed in part by the State of New York under the provisions of Article 126 of the New York Education Law. Said defendants hold their positions pursuant to New York Education Law, §6306. They act under color of the laws and by authority of the State of New York as set forth in Article 126 and so discharge such duties as are necessary or appropriate for the effective operation of the college including the employment and administration of a faculty.

THIRD: Plaintiffs commence this action pursuant to the provisions of the Civil Rights Act of 1871, Title 42 U.S.C., Sections 1983 and 1985 and the provisions of the Constitution of the United States, Fifth and Fourteenth Amendments, as well as New York State Constitution, Article I, §6. Jurisdiction is conferred upon this Court pursuant to Title 28 U.S.C. §1343.

FOURTH: The ADIRONDACK COMMUNITY COLLEGE, acting through the defendants Board of Trustees, entered into a col-

PLAINTIFFS' AMENDED COMPLAINT.

lective agreement under authority conferred upon it by the State of New York as hereinbefore mentioned. Said agreement was effective September 1, 1972 through August 31, 1974, the period hereinafter relevant, with the FACULTY ASSOCIATION OF ADIRONDACK COMMUNITY COLLEGE, an employee organization representing all full time faculty employed by said college. This collective bargaining agreement, hereinafter referred to as Exhibit A, is incorporated as a part of the complaint, a copy of which will be provided to the Court.

FIFTH: Upon information and belief, pursuant to the authority conferred upon it by the State of New York and Article 126 of the Education Law as hereinbefore mentioned, the defendants Board of Education, by their agents, cause to be published and delivered to the plaintiff and other faculty members, the Faculty Handbook of Adirondack Community College, revised as of August 19, 1973. The provisions of this handbook, hereinafter referred to as Exhibit B, are incorporated into this complaint, a copy of which will be provided to the Court.

SIXTH: Plaintiff SAMUEL ROBINSON has been employed as a member of the faculty since the establishment of Adirondack Community College, on or about September 12, 1961. At all times hereinafter mentioned, plaintiff Robinson was

PLAINTIFFS' AMENDED COMPLAINT.

employed as a faculty member having a continuing contract as provided in the collective agreement and the Faculty Handbook.

SEVENTH: Pursuant to the terms of the collective agreement and the Faculty Handbook, such continuing contracts assured plaintiff Robinson his employment up to the end of the academic year within the fiscal year in which he reached his 65th birthday, permitting termination only for cause, retrenchment, resignation or retirement.

EIGHTH: On or about August 20, 1974, plaintiff Robinson was advised by letter from defendant Homer Dearlove of his termination for cause. He was also advised that pursuant to Article VIII, Titles C and D of the Faculty Handbook, he was entitled to a hearing in view of the nature of his termination.

NINTH: By letter dated August 29, 1974, plaintiff Robinson requested a hearing before the Board of Trustees. Pursuant to letter dated September 3, 1974, plaintiff Robinson was notified that a hearing would be conducted pursuant to Article VIII, Title D of the Faculty Handbook on September 19, 1974.

PLAINTIFFS' AMENDED COMPLAINT.

TENTH: After an adjournment, the aforementioned hearing was conducted before the Board of Trustees on October 17, 1974. The hearing was attended by defendants acting as the Board of Trustees, together with Dr. Charles Eisenhart, President of Adirondack Community College and Dean Emerson W. Hibbard, Dean of the College. Plaintiff Robinson was present together with his representative, Jeffrey Plant.

ELEVENTH: During the course of the hearing, Dr. Eisenhart stated that the termination was based upon requests received over a period of two and one-half years, requesting that plaintiff Robinson be terminated. In addition, Eisenhart stated that Robinson's termination was also based upon a recommendation received from the Division Chairman and from members of the faculty in plaintiff Robinson's division. Eisenhart stated that plaintiff Robinson's termination was further based upon a consultation with Dean Emerson Hibbard, the Dean of the college, and that, ". . . it was the unanimous conclusion that, unfortunate and unhappy as this decision was, that for the good of the College, and the purposes of its program, that Mr. Robinson be terminated."

TWELFTH: As appears from the typed minutes of the hearing conducted on October 17, 1974, the decision to terminate plaintiff Robinson was based upon the hearsay statements

PLAINTIFFS' AMENDED COMPLAINT.

made by Eisenhart and Hibbard concerning the opinions of the division chairman and members of the division concerning Robinson's ability to teach. The division chairman and members of the faculty were not present and were not asked to testify.

THIRTEENTH: The hearing, as conducted by the Board of Trustees, acting under color of state law, consisted of the verbal opinions of Eisenhart and Hibbard, unsupported by any documentary evidence, unsupported by complete evaluations, but based merely upon the hearsay statements referred to above.

FOURTEENTH: The conduct of defendants in terminating plaintiff Robinson and the procedures utilized failed to comply with the minimum due process requirements of a fair hearing as required in the United States Constitution, the Fifth and Fourteenth Amendments and the New York State Constitution, Article 1, §6, in that:

- (a) Defendants did not provide plaintiff with sufficient specifications of the charges placed against him as justification for dismissal. Plaintiff was thereby unable to adequately prepare for his defense.

PLAINTIFFS' AMENDED COMPLAINT.

(b) Defendants did not afford plaintiff the opportunity to confront and cross examine his accusers. Defendants knew the names and the claims which would be relied upon as a basis for termination, as made by students, faculty members, the evaluating committee members and medical doctors. Nonetheless, defendants did not call any of the aforementioned as witnesses.

(c) Defendants did not give plaintiff adequate notice of the names of the witnesses and the nature of their testimony that would be used at the hearing.

(d) Defendants did not provide an impartial hearing board with expertise, in that the testimony of members was against plaintiff's interests and was used to substantiate termination.

(e) Defendants failed to administer an oath to any of the persons speaking or providing supporting information at the hearing.

PLAINTIFFS' AMENDED COMPLAINT.

(f) Defendants' decision to dismiss plaintiff was based upon hearsay evidence, unsubstantiated by any other evidence. This evidence was insubstantial and insufficient to justify dismissal of plaintiff Robinson. Defendants did not provide plaintiff with written findings of fact nor other discussion or rationale for the decision to dismiss.

(g) The procedures of Article VIII, Titles C & D utilized by the defendants violate due process on their face in that they place within the sole discretion of the defendants the decision to produce or not produce plaintiff Robinson's accusers at the hearing.

FIFTEENTH: The defendants, by their conduct and acts as alleged above, conspired and engaged in a scheme and conspiracy designed and intended to deny or deprive plaintiff of the rights guaranteed to him by the Constitution and the laws of the United States and by the New York State Constitution, as hereinbefore alleged.

PLAINTIFFS' AMENDED COMPLAINT.

**AS AND FOR A SECOND CAUSE
OF ACTION, PLAINTIFFS AL-
LEGE AS FOLLOWS:**

SIXTEENTH: Plaintiffs repeat and reallege each and every allegation contained in paragraphs numbered FIRST through FIFTEENTH with the same force and effect as if hereinafter alleged.

SEVENTEENTH: By reason of the foregoing actions of the defendants, plaintiff has been deprived of his liberty as guaranteed by the Constitution of the United States and the Constitution of the State of New York in that his good name, professional reputation, honor and integrity have been damaged. Plaintiff Robinson's termination, resulting from the defendant's failure to provide him with the due process requirements as alleged above, have impaired plaintiff Robinson's professional reputation and standing.

EIGHTEENTH: As a result of the foregoing, plaintiff Robinson has been unable and will be unable to obtain comparable employment.

WHEREFORE, plaintiffs request an order of this Court as follows:

PLAINTIFFS' AMENDED COMPLAINT.

1. A declaratory judgment, adjudicating that the defendants' action violated plaintiff Robinson's constitutional rights to liberty and due process as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §6 of the New York State Constitution.

2. That the Court order defendants to reinstate plaintiff Robinson effective August 20, 1974 and to compensate him fully for all earnings and other benefits which he was deprived of since that date, together with interest, costs and reasonable attorneys' fees.

3. That the Court award punitive damages in the amount of \$100,000.00.

4. A declaratory judgment adjudicating that the provisions of the Faculty Handbook of ADIRONDACK COMMUNITY COLLEGE, as contained in Titles C & D are violative of the provisions of the Constitutions of the United States and the State of New York in that they deny plaintiff Robinson his rights to due process and

PLAINTIFFS' AMENDED COMPLAINT.

liberty as guaranteed to him by the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, §6 of the New York State Constitution.

5. That, pending final determination of this action, a preliminary injunction issue requiring the defendants to reinstate plaintiff Robinson to his position on the Faculty, at the same level of responsibility that he had previously held, and performing the same functions as previously required of him.

6. That the defendants be required to remove any reference to plaintiff Robinson's termination, the charges made against him or documents or evidence in support of those charges from plaintiff Robinson's personnel file and that defendants be enjoined from publishing those references or that information in any form.

7. That the Court direct the defendants that, as they deem it necessary to proceed with any disciplinary action against plaintiff Robinson for the conduct herein referred to or any additional conduct, they be required to proceed by a hearing, and under procedural guidelines meeting the requirements of due process and assuring the plaintiff Robinson's liberty as required by the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, §6 of the New York State Constitution.

PLAINTIFFS' AMENDED COMPLAINT.

8. That plaintiffs have such other and further relief as to the Court may seem just and proper.

Dated: Buffalo, New York
April 2, 1976

Respectfully submitted,

LIPSITZ, GREEN, FAHRINGER,
ROLL, SCHULLER & JAMES

By: Carmin R. Putrino
Carmin R. Putrino

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MOTION TO DISMISS ORIGINAL COMPLAINT, 3-16-76.

SAMUEL ROBINSON, et al.

FILE NO. 76-CV

Plaintiffs,

-against-

MOTION

HOMER P. DEARLOVE, et al.

Defendants.

-----X
The defendants DEARLOVE, SCOVILLE, WEAVER, and GOETZ move the Court as follows:

1. To dismiss the action because the Complaint fails to state a claim against defendant upon which relief can be granted.
2. To dismiss the action because this Court lacks jurisdiction over the subject matter as is further described and more clearly appears in the affidavit and exhibits annexed hereto and in the memorandum of law annexed hereto.

Yours, etc.

ROBERT P. ROCHE
Attorney for the Defendants:
Dearlove, Scoville, Weaver & Goetz.

By J. B. Wickenbrey
JED B. WICKENBREY
Office and Post Office Address
90 State Street
Albany, New York 12207
518/463-1193

AFFIDAVIT OF WOLKENBREIT, 3-16-76.

-----x
 SAMUEL ROBINSON and FACULTY ASSOCIATION OF ADIRONDACK COMMUNITY
 COLLEGE,

CIVIL ACTION
 FILE NO. 76-CV-3

Plaintiffs,

-against-

HOMER P. DEARLOVE, Chairman; MERRITT E. SCOVILLE; DURWARD D.
 WEAVER; JOHN GOETZ; LESLIE BRISTOL; JOHN J. CASTLE; JACQUES
 GRUNBLATT; J. HALTER JUCKETT; and JOSEPH RANGLES as the Board
 of Trustees of Adirondack Community College,

AFFIDAVIT IN
 SUPPORT OF
 MOTION UNDER
 RULE 12 (b)

Defendants.
 -----x

STATE OF NEW YORK)
 COUNTY OF ALBANY) SS:
 CITY OF ALBANY)

JED B. WOLKENBREIT, being duly sworn, deposes and says:

1. I am an attorney at law / / licensed to practice in the State of New York and am admitted to practice before the United States District Court for the Northern District of New York; that I am a partner of Robert P. Roche, attorney for defendants, HOMER P. DEARLOVE, MERRITT E. SCOVILLE, DURWARD D. WEAVER and JOHN GOETZ, as trustees of the Adirondack Community College; that I am familiar with the pleadings heretofore served in this action on these defendants and that I make this affidavit in support of a motion by the defendants pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure for an Order dismissing this action on the ground that the Court lacks jurisdiction over the subject matter and that the Complaint as served fails to state a claim upon which relief can be granted.
2. The Complaint as served alleges that this action was commenced pursuant to Title 42 of the United States Code under Sections 1983, 1984, 1985, 1986, 1987 and 1988 with jurisdiction being conferred on this Court pursuant to Title 28 U.S.C. Section 1343.
3. It is the position of the deponent that the Complaint as served fails to state a cause of action under the above stated section of Title 42 and further that the failure to state such a cause of action and to state any facts which would result in a claim upon which relief could be granted deprives the Court of jurisdiction under Section 1343 of Title 28 of the United States Code. It is the deponents further

AFFIDAVIT OF WOLKENBREIT, 3-16-76.

contention that the relevant case law in the area of academic hearings which is the subject matter of this Complaint generally holds that Federal Courts, both as a matter of law and as a matter of comity with the State Courts, should not entertain jurisdiction of actions based on the type of allegations made in the Complaint.

4. A copy of the Complaint served in this action is annexed hereto and made a part hereof.

5. That the Complaint as served in this action makes the following factual allegations:

a. That the plaintiff Faculty Association entered into a collective agreement effective September 1, 1972.

b. That the defendants, pursuant to their authority, published and delivered to the plaintiff a Faculty Handbook (Exhibit B of the Complaint).

c. That the plaintiff Robinson had a "continuing contract" as provided by the aforesaid agreement in Handbook.

d. That the plaintiff Robinson was advised of his termination for cause, was advised that he was entitled to a hearing, that a hearing was held, and that the plaintiff was represented by Counsel.

6. That based on these factual allegations which, for purposes of this Motion must and are deemed to be true, the plaintiffs proceed to conclude that the action of the defendants in terminating the plaintiff Robinson's employment failed to comply with the minimum due process requirements of a fair hearing as required in the Constitution of the United States, Amendment 5 and 14. No allegation is made of a violation of any other civil right. It is also important to note that the Complaint on its face fails to allege any specific state law, statute, ordinance, regulation, custom, or usage under which the plaintiff Robinson or the plaintiff Faculty Association was deprived of such constitutional right of due process.

7. It is further contended that Paragraph "4" alleges that the plaintiff Faculty Association entered into a contract, that the Handbook containing the personnel

AFFIDAVIT OF WOLKENBREIT, 3-16-76.

policies governing termination were part of that contract and that Paragraph "9" indicates that the hearing held concerning the termination of the Plaintiff Robinson was held pursuant to that Contract.

**AS TO THE PLAINTIFF FACULTY ASSOCIATION OF ADIRONDACK
COMMUNITY COLLEGE:**

8. That there is no allegation in the Complaint which sets forth any claim upon which relief can be granted to the Faculty Association under Section 1983-1988 of Title 42 of the U. S. Code, nor is there any factual allegation which would support the allegation in the Complaint that this Court has jurisdiction to entertain such a claim on behalf of the plaintiff Faculty Association under Title 28 U. S. Code, Section 1343.

**AS TO THE PLAINTIFF ROBINSON'S CAUSE OF ACTION UNDER
Section 1983:**

9. There is no factual allegation in the Complaint which would support the legal allegation that this plaintiff was deprived of any right, privilege or immunity secured by the Constitution under color of any statute, ordinance, regulation, custom or usage of any State or territory and in fact, there is no allegation of any particular statute, ordinance, regulation, custom, or usage under which this claim is brought and that the failure to particularly state such factual allegation requires the Court to dismiss this Complaint for failure to state a claim upon which relief could be granted (see memorandum of Law annexed hereto and made a part hereof).

AS TO THE PLAINTIFF ROBINSON'S CLAIM UNDER SECTION 1985:

10. That the Complaint fails to allege with particularity any conspiracy, failed to allege any overt act in the furtherance of such conspiracy and further and more importantly, fails to allege any denial of equal protection of the laws which would be required to state a cause of action under Section 1983 (3) and further that there are no allegations which would sustain a cause of action under Section 1985 (1) or 1985 (2) and that, therefore, the plaintiff Robinson fails to state a cause of action under Section 1985 of Title 42 of U.S. Code.

AFFIDAVIT OF WOLKENBREIT, 3-16-76.

AS TO SECTIONS 1984, 1986, 1987 and 1988:

11. It is further contended that a reading of this Complaint with reference to the above stated Sections clearly indicates that they are not applicable to the instant matter in that 1984 deals with cases which are reviewable by the Supreme Court of the United States; 1986 requires that any action under its terms be commenced within one year from the date of accrual and that the Complaint on its face shows that this termination took place on August 20, 1974; the hearing in question took place on October 17, 1974, and the instant action was commenced on January 6, 1976; and that a reading of Sections 1987 and 1988 with reference to the above mentioned complaint clearly shows that they are not relevant to the matters set forth in such Complaint.

PROCEDURAL ASPECTS OF THIS MOTION:

12. In so far as appearances for the defendant, the undersigned alleges upon information and belief that the only party served with this action are the defendants DEARLOVE, SCOVILLE, WEAVER and GOETZ, and that the other parties while members of the Board of Trustees of the Adirondack Community College at the time of the hearing referred to herein were not served and that therefore, this motion is made on behalf of these defendants and it is further contended that this Court has no jurisdiction over the other defendants since they were not in any way served with a Summons or Complaint.

13. That the hearing referred to in the Complaint, Paragraph "10" was recorded and that a transcript of the minutes of that hearing are annexed hereto and made a part hereof and it is contended that as a matter of law, the minutes of said hearing will show to the Court that the minimum requirements of due process with regard to an academic hearing and under the requirements of due process for said academic hearings as provided by the Courts of the United States are met.

14. That annexed hereto and made a part hereof are the relevant portions of the contract of agreement between the Faculty Association of Adirondack Community College and the Board of Trustees and of the Faculty Handbook as referred to in Paragraph "9" of the Complaint. These exhibits are submitted to the Court in support of the contention

AFFIDAVIT OF WOLKENBREIT, 3-16-76.

that the hearing held and the procedures employed on the termination of the plaintiff Robinson were consistent with the contract provisions outlined and further in support of the contention that the Court is without jurisdiction to declare the provisions of a private contract freely entered into and ratified by essentially private individuals unconstitutional as requested by the Complaint served in the instant action.

WHEREFORE, the undersigned prays an Order pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure dismissing the Complaint of the plaintiff Robinson and of the plaintiff Faculty Association on the grounds that the Complaint as served fails to state a claim upon which relief may be granted and on the further ground that the subject matter of the Complaint is not within the jurisdiction of this Court, together with costs of this motion and such other and further relief as to the Court may seem just, proper and equitable.

JED B. WOLKENBREIT
JED B. WOLKENBREIT

Sworn to before me, this

16th day of March, 1976.

Andrew L. Shutt
Notary Public

**MOTION TO DISMISS AMENDED COMPLAINT AND
SUPPLEMENTARY AFFIDAVIT OF WOLKENBREIT,
4-20-76.**

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

-----X
SAMUEL ROBINSON and FACULTY ASSOCIATION OF ADIRONDACK COMMUNITY
COLLEGE,

Plaintiffs,

-against-

HOMER P. DEARLOVE, Chairman; MERRITT E. SCOVILLE; DURWARD D. WEAVER;
JOHN GOETZ; LESLIE BRISTOL; JOHN T. CASTLE; JACQUES GRUNBLATT;
J. WALTER JUNKETT; and JOSEPH RANGLES as the Board of Trustees of
Adirondack Community College,

Defendants.

CIVIL ACTION
FILE NO.

76 - CV - 3

SUPPLEMENTARY
AFFIDAVIT IN
SUPPORT OF
MOTION UNDER
RULE 12 (b)

-----X
STATE OF NEW YORK)
COUNTY OF ALBANY) SS:
CITY OF ALBANY)

JED B. WOLKENBREIT, being duly sworn, deposes and says:

1. I am an attorney at law duly licensed to practice in the State of New York and am admitted to practice before the United States District for the Northern District of New York; that I am a partner of Robert P. Roche, attorney for defendants, HOMER P. DEARLOVE, MERRITT E. SCOVILLE, DURWARD D. WEAVER and JOHN GOETZ, as Trustees of the Adirondack Community College; that I am familiar with the pleadings and proceedings heretofore served in this action on these defendants and that I make this affidavit in support of a motion by the defendants pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure for an Order dismissing this action on the ground that the Court lacks jurisdiction over the subject matter and that the Amended Complaint as served fails to state a claim upon which relief can be granted.

2. This affidavit is made as a supplement to an affidavit already filed with the Court regarding a motion made which was originally returnable on April 5th, 1976, which motion sought an Order dismissing the action for failure of the complaint to state a claim upon which relief could be granted and additionally, for an Order seeking dismissal on the grounds that the Court lacked jurisdiction over the subject matter. This affidavit is made supplementary to the motion papers served therewith since an amended complaint, which is annexed hereto and made a part hereof

**MOTION TO DISMISS AMENDED COMPLAINT AND
SUPPLEMENTARY AFFIDAVIT OF WOLKENBREIT,
4-20-76.**

has since been served upon the defendant's attorney.

3. The Amended Complaint as served alleges that this action was commenced pursuant to Title 42 of the United States Code under Sections 1983 and 1985 and that jurisdiction was conferred upon this Court pursuant to Title 28 USC, Section 1543.

4. It is the position of the deponent that the amended complaint as served fails to state a cause of action under the above stated sections of Title 42 and that failure to state such cause of action deprives the Court of jurisdiction under Section 1343 of Title 28.

5. As to the basis to these contentions it is submitted that the affidavit and memorandum of law submitted on the motion originally made as to the original complaint is substantially relevant to the instant motion and therefore those papers, which have already been filed with the Court are incorporated herein by references if more fully set forth at length herein.

6. That in addition to the matters contained in said affidavit and memorandum of law, the Court is asked to note that the amended complaint deletes any reference to Sections 1934, 1986, 1987 and 1988 of Title 42 of the United States Code and therefore it is submitted that these Sections are not longer before the Court.

7. As to the contentions made relevant to Section 1985 and the failure to state a specific conspiracy to deprive the plaintiffs of any rights of equal protection, it is submitted that the amended complaint in no way meets the legal requirements to set forth a cause of action under Section 1985 and that the arguments made in the affidavits and memorandum supporting the original motion are adequate to cover our arguments with regard to the amended complaint.

8. The only substantial difference in the amended complaint is that the allegations with regard to the alleged violation of Section 1983 have been amended so as to include a section of state law which the plaintiff used for the proposition that since the defendants hold their positions pursuant to state law, their acts therefore come under the definition of color of state law sufficient to bring this matter under the protections afforded by sections 1983 of Title 42 of the United States Code.

**MOTION TO DISMISS AMENDED COMPLAINT AND
SUPPLEMENTARY AFFIDAVIT OF KENBREIT,
4-20-76.**

9. It is our contention that even with this amended complaint there is no basis, claim, or ground, by which the plaintiff, Faculty Association of Adirondack Community College can in any way claim that the allegation of the complaint state any claim upon which it, as an entity, has been aggrieved by the defendants sufficient to state a claim under Section 1983 of Title 42. It is therefore submitted that this Court is lacking of jurisdiction to entertain such a claim.

10. That with relation to the plaintiff, Samuel Robinson, all of the arguments set forth in the original affidavit in support of the motion to dismiss the original complaint for failure to state a claim under Section 1983 are incorporated herein by reference with the additional submission to the Court of the fact that the complaint itself alleges that while the defendants hold their position pursuant to the New York State Education Law, Section 6306, the actions complained of in the complaint were done pursuant to a contract between the employee organization of which the plaintiff was a member and the defendants. It is further alleged that the collective bargaining agreement referred to as "Exhibit A" of the amended complaint and the handbook referred to as "Exhibit B" in the complaint, both of which were incorporated into the amended complaint, set forth the basis of the actions taken by the defendant. It is therefore submitted that the plaintiff himself has admitted that the actions taken were not done under color of State Law but rather pursuant to a contractual agreement which it is submitted would mean that only did the defendants not deprive the plaintiff of any of his rights but additionally, perform pursuant to a contract and that their actions were performed according to the terms of that contract.

11. The Court is referred specifically to paragraphs "NINTH" and "TENTH" of the amended complaint which indicated that the plaintiff requested a hearing, was notified that the hearing would be held pursuant to the handbook, which was a part of the contract, and that the aforementioned hearing was indeed held.

12. The Court is also referred to the minutes of the hearing which were annexed to the original motion papers as well as the relevant portions of the handbook and of the contract, both referred to in the amended complaint which, it is

**MOTION TO DISMISS AMENDED COMPLAINT AND
SUPPLEMENTARY AFFIDAVIT OF WOLKENBREIT,
4-20-76.**

submitted, on their face, controvert the contention made in paragraph "TWELFTH" of the amended complaint that the decision to terminate was based solely on hearsay statements and which allegation completely ignores the fact that the basis for termination was the fact that the plaintiffs medical condition caused the plaintiff to be unable to continue his responsibilities as a teacher in the College and further that it was the medical opinion of the plaintiffs doctor obtained upon a release by the plaintiff, that the plaintiff would not likely ever be able to continue his teaching responsibilities again.

WHEREFORE, based on the allegations set forth herein and further upon the allegations set forth in the motion papers heretofore filed with this Court, the undersigned prays an Order pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure dismissing the amended complaint of the plaintiff Robinson and of the plaintiff Faculty Association on the grounds that the amended complaint as served fails to state a claim upon which relief may be granted and on the further ground that the subject matter of the amended complaint is not within the jurisdiction of this Court, together with the costs of this motion and such other and further relief as to the Court may deem just, proper and equitable.

Jed B. Wolkenbreit
JED B. WOLKENBREIT

Sworn to before me this 20th day
of April, 1976.

Linda L. Luttig

Notary Public

POST-HEARING LETTER AND MEMORANDUM
(Putrino), 5-11-76.

May 11, 1976

Hon. James T. Foley
U.S. District Court Judge
Northern District of New York
United States Post Office and Court House
Albany, New York 12207

Re: Robinson, et al. v. Dearlove, et al.
Civ. 1976-3

Dear Judge Foley:

Pursuant to your request and permission given following oral argument on May 3, 1976, I should like to submit this letter in opposition to the motion to dismiss the above matter.

It is my understanding from reading the affidavit in support of the initial motion to dismiss which was made by counsel for the defendants on March 16 that this motion was intended merely as a motion to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure. The affidavit is so captioned. Paragraph 6 of that affidavit concedes that for the purposes of the motion, the allegations in the complaint must be deemed to be true.

My reading of that affidavit and the subsequent affidavit submitted by counsel for the defendants dated April 20, 1976 leads me to conclude that defendants intended this as a motion to dismiss. Given that fact, I think it would be inappropriate for the Court to consider affidavits or evidence beyond the allegations in the complaint. As is conceded by the defendants, for purposes of a Rule 12(b) motion, all of the allegations of the complaint are deemed to be true. Drachman v. Harvey, 453 F.2d 727 (2d Cir. 1971); Murray v. City of Milford, 380 F.2d 468 (2d Cir. 1967); A.P. Brod & Company v. Perlow, 375 F.2d 393 (2d Cir. 1967).

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On a motion to dismiss pursuant to Rule 12(b), it has been held that the court should not dismiss an action unless it appears to a certainty that the plaintiff is not entitled to relief, based upon the facts he could prove in support of his claim. Haines v. Kerner, 404 U.S. 619 (1972); Build of Buffalo, Inc. v. Seditz, 441 F.2d 284 (2d Cir. 1971).

It is submitted a reading of the amended complaint reveals the plaintiff alleges causes of action both under Title 42 U.S.C. §§1983 and 1985. That point was previously briefed. Given that fact and the defendants' apparent intention to rely upon Rule 12(b), it would be inappropriate to treat the motion as a motion for summary judgment.

The defendants' claim that the complaint fails to allege sufficient facts indicating the Court has subject matter jurisdiction over this claim is also without merit. That argument has been previously briefed as well. Nonetheless, it is submitted such a claim by the defendants is not a claim upon which the Court may reach the merits at this time. Nagler v. Admiral Corporation, 248 F.2d 319 (2d Cir. 1957); Dioguardi v. Durning, 139 F.2d 774 (2d Cir. 1944).

Inasmuch as the defendants have submitted affidavits raising factual questions and attaching documentary evidence, the Court may treat its motion as a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. If the Court treats the instant motion as a motion for summary judgment based upon the transcript, affidavits or other documents, the standards applicable to such a motion must be applied in deciding whether to grant summary judgment. A motion for summary judgment is an issue finding motion which must be denied if the Court finds questions of fact. Thompson v. New York Central R.R., 361 F.2d 137 (2d Cir. 1961); Sardo v. McGrath, 196 F.2d 20 (D.C. Cir. 1952).

In the present posture of the case, the Court does not have answers to the allegations contained in the complaint. Documents submitted by the defendants and the affidavits submitted by the defendants do not clearly indicate which of the allegations in the complaint, if any, the defendants are denying. There are a number of questions of fact, however, which are readily apparent.

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There is a substantial question of fact as to the cause for the plaintiff's termination. Plaintiff alleges in paragraph 8 of the amended complaint that he was advised of his termination for cause pursuant to Article VIII, Title C and D of the Handbook and Personnel Policies. As appears from paragraph 12 of the affidavit of defendants' counsel dated April 20, 1976, as well as from a portion of the brief and the argument made by defendants' counsel before the Court, plaintiff was apparently terminated because of his mental condition. That portion of the contract attached to defendants' moving papers reveals termination for cause or termination for retrenchment are the only two grounds provided by contract. The Personnel Policies which are a part of the complaint, reveal there is a separate provision for termination based upon medical reasons. Such termination for medical reasons is subject to a hearing procedure provided in Article IX of the Personnel Policies rather than in Article VIII which was allegedly utilized in the instant case. (See Personnel Policies at p. 14).

It is difficult to determine from reading the transcript of the hearing whether the employer was relying upon incompetence or ability to perform services or for mental or physical incapacity in the words of Article IX Title D. As plaintiff was not given a written specification of the reasons for his termination prior to the commencement of the hearing or written conclusions of the Board of Trustees at the conclusion of the hearing, plaintiff is unable to determine the reasons relied upon by the defendants for their action. Nonetheless, there certainly is a question of fact as to the bases relied upon by the defendants for their action and a dispute as to whether they had support for their decision. Furthermore, there is a dispute as to the authority for the Board of Trustees action; i.e., whether they were proceeding to terminate plaintiff for cause because of incompetence or pursuant to Article IX for mental or physical incapacity. The arguments in the affidavit and suggestions in the transcript contradict the allegations of the complaint and pose an obvious question of fact.

In paragraph numbered 14 of the amended complaint plaintiff alleges 6 denials of due process. Whether those procedural rights are guaranteed to the plaintiff is a question of law to be determined by the Court. To the extent plaintiff alleges they are his procedural rights and were denied him, it appears defendants

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dispute that fact. A question of fact is raised as to whether the plaintiff was granted each or any of those procedural rights.

Finally, with respect to the second cause of action, there is nothing in the transcript nor the affidavits which bear on the second cause of action alleging a violation of §1985. In its present posture, the Court would thus be forced to either grant summary judgment to the plaintiff on that cause of action or, at the very least, find questions of fact which must proceed to trial.

For the foregoing reasons it is respectfully submitted the case is not in an appropriate posture to be resolved by summary judgment pursuant to Rule 56. For this reason, it would be inappropriate to consider the transcript or evidence beyond the scope of the complaint. Should the Court determine it will consider the transcript and other evidence outside the scope of the pleadings, and treat the motion as a motion for summary judgment, plaintiff requests permission to submit other evidence in support of the complaint pursuant to Rule 12(b).

As I indicated in Court, I am enclosing a copy of the Personnel Policies of Adirondack Community College which are incorporated and a part of the complaint.

in Made

Yours very truly,

LIPSITZ, GREEN, FAHRINGER,
ROLL, SCHULLER & JAMES

By
Carmin R. Putrino

Enc.
CRP:jmt
cc: Jed B. Wolkenbrit, Esq.
90 State Street
Albany, New York 12207

POST-HEARING LETTER AND MEMORANDUM
(Wolkenbreit), 5-17-76.

ROBERT P. ROCHE
ATTORNEY AND COUNSELLOR AT LAW
NINETY STATE STREET
ALBANY, NEW YORK 12207

ROBERT P. ROCHE
JED B. WOLKENBREIT
TELEPHONE 518-483-1108

May 17, 1976

DAVID W. MORRIS
ASSOCIATE COUNSEL
LATHAM OFFICE

Honorable James T. Foley
U. S. District Court Judge
Northern District of New York
United States Post Office and Courthouse
Albany, New York 12207

Re: Robinson, et al. v. Dearlove, et al.
Civil Action #1976-3

Dear Judge Foley:

I am in receipt of Mr. Putrino's letter to you dated May 11 with regard to the above entitled matter which letter was submitted to you in opposition to the motion to dismiss the above referenced matter.

I believe that Mr. Putrino's letter set forth certain erroneous interpretations which I would like to correct by way of this letter. Primarily, it is our contention that as on any motion to dismiss general allegations of fact made in the complaint must indeed be deemed true, but that this presumption only goes to factual allegations and does not attach to conclusions and especially conclusions of law as set forth by my opponent.

In line with this interpretation I would ask the Court to consider the following aspects:

1. That in order to state a cause of action under Section 1983 of Title 42 of the United States Code, the complaint must set forth allegations that show that a person, under color of State Law, subjected a citizen of the United States or other person within the jurisdiction of the United States to the deprivation of a right, privilege or immunity secured by the Constitution and laws of the United States. It is submitted that nothing contained in the complaint or any of the papers submitted by the plaintiffs show that the Faculty Association is either a person, nor has been subjected to the deprivation of any rights, privileges or immunities. As a matter of fact, in reading the amended complaint, the Court should know that with the exception of the allegations identifying who the Faculty Association is and that they entered into a contract with the Board of Trustees, there is no other reference to that Plaintiff; and therefore, the motion pursuant to Rule 12B is indeed proper and should clearly be granted against that plaintiff.

2. As to the issue of jurisdiction, it is alleged in the Complaint that jurisdiction is conferred upon this Court pursuant to Title 28 U.S.C. Section 1343. A clear reading of this Section indicates that an order for the Court to obtain jurisdiction, a claim must be stated either under Section 1985 or 1983 of Title 42 or a claim stated sufficient to show that the plaintiff is entitled to recover damages or to secure equitable or other relief under an act of Congress providing for the protection of civil rights including the right to vote. Clearly since allegations in this complaint refer only to sections 1983 and 1985, a claim under one of these statutes must be shown in order for the Court to even have jurisdiction of this matter.

Continued...

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3. As to the allegations made under Section 1985 of Title 42, it is submitted that the plaintiff Robinson has in no way met the requisits of case law in alleging such a cause of action. The plaintiff's memorandum of law attempts to state that many reported cases now recognize the rule that rights which are basically due process rights may be protected from intentional discrimination by defendants. The words "intentional discrimination" in and of themselves have generally been used by Courts in dealing with equal protection problems. The holdings of such cases would only be applicable if the plaintiff had in some way alleged that the denial of due process to this defendant was done in such a way as to intentionally discriminate against him either in favor of other parties or some other way treat him different from other parties. There are no allegations in this complaint which would sustain this claim even if they are factually believed to be true at this time. Moreover, the amended complaint itself affirmatively alleges that the Board of Trustees in dismissing this plaintiff from his duties at the university complied with the provisions of the Faculty Association's contract which incorporated the so-called Faculty Handbook Rules, that the plaintiff was advised of his dismissal pursuant to that contract, was afforded the hearing required by that contract and was dismissed pursuant to the contract. It is submitted that this affirmative allegation by the plaintiff himself not only destroys his argument that there was any conspiracy involved, but affirmatively admits that there was no intentional discrimination against him which would be actionable under Section 1985.

4. The only question therefore left is whether the amended complaint states a sufficient cause of action under Section 1983. The arguments of plaintiff's Counsel in this regard constitutes a veritable admission of the fact that no claim under 1983 is stated. Counsel attempts to argue that he has incorporated both the contract and the personnel policies in his complaint and attempts to show that if the plaintiff were terminated for cause, he would be terminated under Title D which appears on page 12 of the personnel policies. Under Title D he is entitled to a hearing and was indeed afforded such a hearing. He then attempts to argue that were he terminated under Article IX Title D entitled, "Retirement for Physical or Mental Incapacity", he would not be entitled to a hearing. He then attempts to say that since he could have been terminated under the Mental Incapacity Section, and that Section may be violative of some due process rights, he has a cause of action under Section 1983. The fact of the matter is that the plaintiff was not terminated under that Section; and that the hearing held was held pursuant to the termination for Cause Section and this can be undisputed since the exhibit attached to the plaintiff's Memorandum clearly states that this is the case. This attempt to confuse the Court into finding a cause of action where none exists does not change the fact that the Complaint which is clearly, properly before the Court does not state any factual allegations, which whether believed or not state a cause of action.

5. Finally, we are faced with the plaintiff's attempt to say that only those items which he chooses to put forth before the Court are properly cognizable by the Court on this motion. Clearly the contract and the handbook of rules are before the Court as they have been incorporated into the Complaint. The question of whether or not any state action is involved is a matter which is properly cognizable by the Court by taking notice of Article 126 of the Education Law of the State of New York. The very question of whether or not the handbook is promulgated pursuant to the authority of that statute is one that can clearly be decided by this Court as a matter of law, the defendants obviously submitting that such handbook was not published or delivered pursuant to Statute. Further paragraph 11 of the Complaint details the reasons for the plaintiff's termination and Paragraph 12 of

Continued...

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of the complaint states, "As appears from the typed minutes of the hearing conducted on October 17, 1974" given this set of facts, it seem distinctly unfair that plaintiff now attempts to stay that the Court is precluded from reading the typed minutes which it clearly refers in its complaint. Obviously the minutes themselves are the best evidence of exactly what occurred at the hearing and by referring to them specifically in his complaint, it is submitted that they are indeed not only properly before the Court but are in essence a part of the complaint itself.

After reading the complaint and the papers submitted on this motion, the Court can clearly and as a matter of law determine:

- a. Exactly what due process means with relation to an academic hearing.
- b. Whether or not the allegations made in Paragraph 14 of the complaint read in relation to the other material before the Court amount to a denial of that due process.

In closing let me simply state that in his letter to the Court, Mr. Putrino said that to the extent that plaintiff alleges that his procedural rights were denied him, it appears that defendants dispute that fact and this raises a question of fact as to whether the plaintiff was granted each or any of these procedural rights. This is to some degree a misstatement of our position. Our position is that for purposes of this motion, that Mr. Robinson has not raised any allegation in his complaint which is cognizable by this Court and for which this Court has jurisdiction to grant relief. Indeed it has been held that if an instructor challenges his termination on grounds that his constitutional rights have been infringed, a decision of that claim should be avoided if any valid non-discriminatory ground could be shown to have been the basis of the institutions action. In this case since there is not even an allegation that the termination was based on a discriminatory ground, it is contended that the method of discharge is not properly before this Court, such clearly being a question of law which this Court can clearly decide on the instant motion.

Respectfully yours,

JED. B. WOLKENBREIT

JBW/ss

cc: Lipsitz, Green, Fahringer, Roll, Schuller & James
Attention: Carwin R. Putrino, Esq.

OPINION BELOW (Foley, J., N.D.N.Y.), 6-29-76.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SAMUEL ROBINSON and FACULTY ASSOCIATION OF
ADIRONDACK COMMUNITY COLLEGE,

Plaintiffs,

vs.

76-CV-3

HOMER P. DEARLOVE, Chairman; MERRITT E.
SCOVILLE; DURWARD D. WEAVER; JOHN GOETZ;
LESLIE BRISTOL; JOHN J. CASTLE; JACQUES
GRUNBLATT; J. WALTER JUCKETT; and JOSEPH
RANGLES, as the Board of Trustees of
Adirondack Community College,

Defendants.

APPEARANCES:

LIPSITZ, GREENE, FAHRINGER, ROLL,
SCHULLER & JAMES

Attorneys for Plaintiffs
One Niagara Square
Buffalo, New York 14202

ROBERT P. ROCHE
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Albany, New York 12207

OF COUNSEL:

CARMIN R. PUTRINO

TERRANCE NIENAN
8 Wade Road
Latham, New York 12110

ED B. WOLKENBREIT

JAMES T. FOLEY, D.J.

MEMORANDUM-DECISION and ORDER

The plaintiff, Samuel Robinson, was employed as a member of the faculty of Adirondack Community College since its founding on or about September 12, 1961. On August 20, 1974, he was advised by letter from the Chairman of the Board of Trustees, all of whom are named as defendants here by virtue of such membership on the Board of Trustees (hereinafter "Board") that his employment was terminated for cause pursuant to Article VIII, Titles C and D of the Faculty Handbook. Pursuant to the provisions of Article VIII, a hearing was afforded to plaintiff before the Board. Plaintiff attended this hearing with his personal attorney who spoke on plaintiff's behalf as well as questioning members of the Board and examining some documents relative to the termination.

The instant action is brought challenging this termination as

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violating plaintiff's civil rights pursuant to the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1985, the Fifth and Fourteenth Amendments of the United States Constitution and Article I, § 6 of the New York State Constitution. Jurisdiction is alleged pursuant to Title 28 U.S.C. § 1343. The Faculty Association of Adirondack Community College is also named as a plaintiff which raises certain unique issues discussed infra. Reference will be made to plaintiff Robinson individually in light of the essence of this action which challenges the hearing procedure accorded to him prior to his employment termination.

Defendants Dearlove, Scoville, Weaver and Goetz file a motion supported by an affidavit and exhibits to dismiss the Complaint: (1) for failure to state a claim upon which relief can be granted and (2) for lack of jurisdiction over the subject matter. For the reasons below, the defendants' motion is granted for the failure of the amended complaint to state a claim upon which relief can be granted.

The complaint and the amended complaint essentially allege what has become standard if not stereotyped legal claims, filed increasingly in the federal district courts, under the decisions in Board of Regents v. Roth, 408 U.S. 564 (1972) and Perry v. Sindermann, 408 U.S. 593 (1972), to wit: (1) that plaintiff was denied one form of liberty and property right, i.e., that his job was terminated without the full complement of due process rights being accorded, and (2) that the job termination deprived him in turn of another liberty and property right in that his reputation has been damaged by the termination. It is my judgment, based on very recent decisions of the Supreme Court clarifying the perimeters of the Roth and Perry standards, that even assuming the truth of plaintiff's allegations, no constitutional rights were denied to him by the termination of his employment.

The decision of the Supreme Court in Bishop v. Wood, ____ U.S.

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_____, 44 U.S. Law Week 4820 (June 10, 1976), has clarified the role of the federal courts in reviewing state personnel decisions where deprivations of rights of liberty and property under the due process clause are alleged. The Court said that:

[t]he federal court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies In the absence of any claim that the public employer was not motivated by a desire to curtail or to penalize the exercise of an employee's constitutionally protected rights, we must presume that official action was regular and, if erroneous, can best be corrected in other ways. The Due Process Clause of the Fourteenth Amendment is not a guarantee against incorrect or ill-advised personnel decisions.

Id., at 4822-23.

The examination of the claims in a complaint especially in the civil rights area must be done not only with a liberal construction in plaintiff's favor, but also all factual allegations must be taken as true for the purposes of adjudicating a motion to dismiss. *Cooper v. Pate*, 378 U.S. 546 (1964); *Conley v. Gibson*, 355 U.S. 41 (1957); *Weise v. Syracuse University*, 522 F.2d 397 (2d Cir. 1975); see also *Noble v. University of Rochester*, ____ F.2d ____, Slip Op. 4033 (June 7, 1976); *Egelston v. State Univ. College at Geneseo*, ____ F.2d ____, Slip Op. 4025 (2d Cir. June 7, 1976).

The claim of deprivation of the constitutional rights made in the amended complaint to his job and reputation is based solely on the theory that the hearing procedure, as mandated by the Faculty Handbook, Article VIII, Titles C and D, is inadequate both on its face and in regard to the hearing actually granted to plaintiff to meet the requirements of the Fourteenth Amendment of the United States Constitution [the Fifth Amendment is also cited] and Article I, § 6 of the New York State Constitution. It is noteworthy that no other constitutional rights are claimed to have been violated as, e.g., free speech or religious rights or privileges. The claim to

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diminished reputation is alleged as "resulting from the defendants' failure to provide him with due process requirements as alleged above . . ." not from any publicized false findings or other statements which have damaged plaintiff's reputation by their content. See Amended Complaint, p. 9, ¶ 17. Thus both claims to loss of job and reputation are based on the theory that the Faculty Handbook's hearing procedure falls short of the requirements of due process mandated by the Fourteenth Amendment.

In my judgment, in light of these new guidelines by the United States Supreme Court, referred to above, no claim upon which relief may be granted is stated in these claims. In *Bishop v. Wood*, supra, the plaintiff, a police officer with "permanent" status was "terminated [in his] employment as a policeman without affording him a hearing to determine the sufficiency of the cause for his discharge." Id., at 4820. (emphasis supplied). Indeed, he was not even notified of the basis of his termination until pretrial discovery in his federal civil rights action. The Court held that since this was all that state law mandated, no further requirements were imposed under the Fourteenth Amendment.

In affirming the grant of summary judgment the Supreme Court essentially held that plaintiff's employment rights, protectable under the Fourteenth Amendment Due Process Clause, were coextensive with the state law, as interpreted by state courts, which created and defined them. The Court accepted that the state law allowed termination of employment "at the will and pleasure of the city" and "removal on compliance with certain procedures." [*Bishop v. Wood*, supra, 44 U.S. Law Week at 4821], and that state law defines the procedures for removing a property right as well as defining the conditions for vesting of the property right itself. In *Bishop* the city's procedure did not mandate a hearing; the district court by granting a motion for summary judgment denied the need for a hearing in federal court and the Supreme Court affirmed, holding

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that no hearing was mandated by the Fourteenth Amendment itself.

In this sense, plaintiff's amended complaint does not claim that he was deprived of any right guaranteed by state law, regulation or rule, such as the provisions of the Faculty Handbook. The claim made is rather that these provisions for hearing and decision procedures do not go far enough to comply with the Fourteenth Amendment. In this regard Bishop indicates that the states are fully competent to enact procedures for the withdrawal as well as the granting of job rights and federal courts are not mandated to review every decision terminating employment or the procedures by which such personnel decisions are made. Our federalism is still an important concept and must be given practical application in order to be preserved.

Plaintiff in another claim urges that his due process rights are violated because the Board was biased, but plaintiff falls far short to my mind of alleging actual bias even under the most liberal reading of the amended complaint. Indeed, the claim that members of the Board were incompetent to hold a termination hearing because they were also involved in the controversy has been expressly rejected by the Supreme Court very recently as having insufficient merit to state a claim for relief in a federal court. In *Hortonville School District No. 1 v. Hortonville Education Association*, ____ U.S. ____, 44 U.S. Law Week 4864 (June 17, 1976) the Court said:

[d]etermining what process is due in a given setting requires the Court to take into account the individual's stake in the decision at issue as well as the State's interest in a particular procedure for making it. . . . State law vests the governmental, or policy-making, function exclusively in the School Board and the State has two interests in keeping it there. First, the Board is the body with the overall responsibility for the governance of the school district; it must cope with the myriad day-to-day problems of a modern public school system. . . . Second, the state legislature has given to the Board the power to employ and dismiss teachers, as a part of the balance it has struck in the area of municipal labor relations; altering

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those statutory powers as a matter of federal due process clearly changes that balance.

Id., at 4868.

This decision, in my judgment, negates the claim of plaintiff here that the Board of Trustees must be considered inherently biased because its members were witnesses to facts which it was also called upon to decide.

A showing that the Board was "involved in the events preceding this decision . . . is not enough to overcome the presumption of honesty and integrity in policymakers with decision-making power. *** Accordingly, we hold that the Due Process Clause of the Fourteenth Amendment did not guarantee respondents that the decision to terminate their employment would be made or reviewed by a body other than the School Board.

Id., at 4868.

A federal claim in this respect is established:

only if the Board's prior involvement in negotiating with teachers means that it cannot act consistent with due process.

Id., at 4867.

Thus, in the absence of such a showing or of such allegations at this stage, no claim of bias has been stated in the amended complaint by merely pointing out an involvement of members of the hearing body, e.g., as witnesses or investigators, in the controversy itself, i.e.,

the combination of investigative and adjudicatory functions does not, without more, constitute a due process violation [unless] . . . the risk of unfairness is intolerably high.

Withrow v. Larkin, 421 U.S. 35, 47 (1975).

There are no allegations which indicate any conflict of interest, animosity or other facts which might raise an issue of a biased hearing before the Board. The transcript of the hearing is attached to the motion papers, and from my reading, evidences the allowance of full opportunity to the plaintiff to present his side, and an attitude on the part of the Chairman and Members of the Board of Trustees at the hearing to be considerate of plaintiff, with obvious reluctance toward the unpleasant responsibility to decide upon his

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termination.

The other basis for plaintiff's amended complaint is somewhat more difficult to appraise legally, but after consideration no more meritorious than the previous one challenging the termination of his employment. In the claim denominated as "Second" in the amended complaint, plaintiff claims that his reputation was damaged by inadequacies in the hearing procedure per se. See supra, Amended Complaint at p. 9 ¶ 17. No claim is made of intentional publication of information adverse to plaintiff or any statement that plaintiff was disqualified to teach generally. Compare, Huntley v. Community School Board of Brooklyn, ____ F.2d ____, Slip Op. 3685, 3696, 3699 (2d Cir. May 12, 1976). The mere assertion that reputation has been damaged without facts underlying the claim is insufficient to state a federal claim. There is one other source for a claim of loss of reputation which, although not contained in any factual way in the amended complaint, can be found in the transcript of the hearing that it should be noted was provided to plaintiff by the Board. It must be briefly noted that in a letter-memorandum to this Court, counsel for plaintiff refers to the "Second" claim in the amended complaint as based upon 42 U.S.C. § 1985. See Letter, p. 4 (Rec'd May 13, 1976). However, this would seem an inadvertent reference since the "Second" claim only factually alleges a loss or damage to proprietary reputation. Except for the incorporation clause of the second claim, the claim to a § 1985 violation is contained in the "First" claim, particularly, paragraph 15 at page 8, and will be discussed infra.

The hearing transcript indicates that a physical and mental impairment due to an illness was a factor raised by, inter alia, allusion to information obtained from plaintiff's personal physician. Consideration of this basis will be discussed here even though not pleaded to assure that all possible claims plaintiff might have raised in the pleadings are evaluated as to stating a federal claim.

The Supreme Court in Bishop made a significant holding that the

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maintenance of privacy with respect to adverse findings by an administrative body may diminish or eliminate any constitutional claim to loss of reputation.

In this case the asserted reasons for the City Manager's decision were communicated orally to the petitioner in private and also were stated in writing in answer to interrogatories after this litigation commenced. Since the former communication was not made public, it cannot properly form the basis for a claim that petitioner's interest in his "good name, reputation, honesty, or integrity" was thereby impaired. . . . A contrary evaluation . . . would penalize forthright and truthful communication between employer and employee . . .

Bishop v. Wood, supra, 44 U.S. Law Week at 4822.

The Court of Appeals, Second Circuit, has also recognized that the privacy which is maintained over legitimately kept information adverse to an employee might eliminate any constitutional claimed loss of reputation by actions of the government.

See Velger v. Cawley, 525 F.2d 334, 337 (2d Cir. 1975), pet. for cert. filed, 44 U.S. Law Week 3359 (Dec. 8, 1975).

The amended complaint does not itself allege publication of any of this medical information from the hearing, nor does it seem that the Board was unsympathetic to plaintiff's condition. Moreover, the Board did not publicly find that plaintiff was suffering under any particular mental or physical impairment. This hearing, in my judgment, was a fair attempt to evaluate circumstances which several members of the Board were themselves witness to and which plaintiff, by his legal counsel, was able to investigate by interrogating all those present at the hearing. Plaintiff appeared at this hearing with his counsel at that time, and was allowed to question and respond to anything said in support of plaintiff's position.

The procedure at this meeting was directed toward giving plaintiff full consideration in allowing him to completely respond to all statements made under the circumstances. See Lombard v. Board of Education of City of New York, 502 F.2d 631, 637-38 (2d Cir. 1974), cert. denied, 420 U.S. 976 (1975). No right to review such a personnel

OPINION BELOW (Foley, J., N.D.N.Y.), 6-29-76.

decision in federal court automatically accrues merely because an issue or finding of physical or mental incapacity is raised as a result of the administrative hearing, even if that determination is erroneous. *Bishop v. Wood*, supra, 44 U.S. Law Week 4822-23; *Leonard v. Sugarman*, 466 F.2d 1366-1367 (2d Cir. 1972) (per curiam).

It should be noted that plaintiff was a faculty member of long standing with Adirondack Community College and had the respect of every member of the Board who spoke on the record. The decision to relieve him of teaching responsibilities did not appear an easy one for the Board and was only made after personal investigation and verification of facts by Board members themselves and after affording plaintiff much consideration. To be sure the meeting was conducted in an informal manner with counsel for plaintiff consuming the majority of time asking questions and presenting argument. The informality, however, particularly in such an academic setting, did not detract from its fairness.

In sum, it is my judgment that even when all factual allegations of the instant complaint are accepted, as they must be, there is not stated any violation or deprivation of federal constitutional rights that is sufficient to state a claim for relief. The allegations contained in the amended complaint, in other words, do not amount to a deprivation of liberty or property either in employment or reputation under recent decisions of the Supreme Court. State administrative personnel decisions may properly utilize a variety of fair hearing procedures short of full trial-type procedures. State agencies may make findings adverse to an employee as long as there is no unjust bias in the process with a reasonable limitation on publication or dissemination of the adverse information. States may, in short, define the limits of the proprietorial employment rights given to state workers and only matters of fundamental unfairness, which does not necessarily mean an incorrect or erroneous determinations, are reviewable in federal court.

OPINION BELOW (Foley, J., N.D.N.Y.), 6-29-76.

Three points must be mentioned which are tangential to my judgment that no federal claim has been stated.

First, it is questionable whether plaintiff has stated any claim of conspiracy pursuant to 42 U.S.C. § 1985 in the amended complaint. Plaintiff's termination resulted from the actions of the Board alone, which is named only by its individual members in their official capacities. No other division of the college is alleged to have participated and, as such, this litigation does not involve two or more persons or entities pursuant to the requirements of § 1985. See *Girard v. 94th St. & Fifth Ave. Corp.*, 530 F.2d 66, 71 (2d Cir. 1976). Second, also under the rationale of *Girard*, there is no need to consider plaintiff's pendent claims made under the Constitution of New York State. See *Id.*, at 72; *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966); see also *Monell v. Dept. of Social Services of the City of New York*, ___ F.2d ___, Slip Op. 2409, 2417 (2d Cir. March 8, 1976).

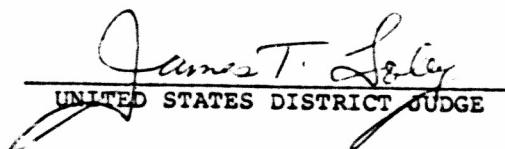
Lastly, the naming of the Faculty Association of Adirondack Community College as a party plaintiff does not alter this decision and would additionally raise questions of standing as to the "injury in fact" sustained by such organization. This need not be discussed in this context. *Simon v. Eastern Kentucky Welfare Rights Organization*, ___ U.S. ___, 44 U.S. Law Week 4724, 4728 (June 1, 1976).

In conclusion, the motion by the several named defendants to dismiss the amended complaint for failure to state a claim is hereby granted and the amended complaint is dismissed.

It is so Ordered.

Dated: June 29, 1976

Albany, New York


UNITED STATES DISTRICT JUDGE

EXHIBITS

**EXHIBIT A - Faculty Association -- Trustees' Labor
Agreement.**

AGREEMENT

Between

THE FACULTY ASSOCIATION OF
ADIRONDACK COMMUNITY COLLEGE

and

THE BOARD OF TRUSTEES

of

ADIRONDACK COMMUNITY COLLEGE

This Agreement, pages 1 through 34
constitutes the document mutually
arrived at by and between the Board of
Trustees and the Association, and be-
fore it can be effective, is subject to
approval and ratification by the appro-
priate parties described herein.

For the College Negotiation Committee

Merritt E. Scoville, Chairman

For the Association Negotiation Committee

Paul T. Gallipeo, President

Approved and ratified by the Association: August 31, 1972

Approved and ratified by the Board of Trustees: August 17, 1972

Approved and ratified by Warren County Board of Supervisors:
September 15, 1972

Approved and ratified by Washington County Board of Supervisors:
September 15, 1972

**EXHIBIT A - Faculty Association - Trustees' Labor
Agreement.**

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Step G. The President shall inform the faculty member in writing of the Board's action within one week thereafter.

C. Promotions shall take effect the following September 1.

ARTICLE IX - PROFESSIONAL RESPONSIBILITY

The concept of academic freedom must be accompanied by an equally demanding concept of professional responsibility. Institutions of higher education are committed to open and rational discussion as a principal means for the clarification of issues and the solution of problems.

The personal life of a member of the academic community is not within the appropriate concern of the College except in such instances when the same is a detriment to the performance of his duties or brings opprobrium upon the institution. The use of physical force, psychological harassment, or other disruptive acts which interfere with institutional activities, freedom of movement on the campus, or freedom of all members of the academic community to pursue their rightful goals, is the antithesis of academic freedom and responsibility. So, also, are acts which, in effect, deny freedom to speak, to be heard, to study, to teach, to administer, and to pursue research.

It is incumbent upon each member of the academic community to be acquainted with his individual responsibilities as delineated by appropriate institutional statements.

Additionally, the concept of "institutional loyalty" still has a proper place within the academic community and imposes the further responsibility on all members of the academic community to attempt, honestly and in good faith, to preserve and defend the institution and the goals it espouses, without restricting the right to advocate change.

ARTICLE X - EMPLOYMENT CONTRACTS

A. Appointments

Appointments to the full-time teaching faculty shall normally be for a single academic year on a term contract for the first three full years of teaching service. The fourth contract issued by the College after three full regular academic years of continuous service shall be a continuing contract. The continuing contract shall terminate at the end of the academic year which falls within the fiscal year in which he reaches his 65th birthday.

EXHIBIT A - Faculty Association - Trustees' Labor Agreement.

B. Contract Renewal

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1. Within one week following the end of the first semester, the Dean, after consultation with the Division Chairman and receiving from him the opinions of the other division members involved, shall discuss with the President renewal of contracts and the granting of continuing contracts.
2. The President shall present his recommendation to the Board of Trustees at the February meeting of the Board.
3. It is mutually agreed that where a decision has been made by the President not to recommend renewal of contract or the granting of continuing contract, this information will be given informally to the faculty member by the President in confidence as far in advance of the February meeting of the Board as a decision is reached. Such decision shall be arrived at by the President only after consultation with the Dean and the appropriate Division Chairman.
4. Contracts shall be returnable by the faculty member to whom issued ten (10) days or less after the faculty member receives his, except that extension of time may be granted by the President.
5. Resignations from a term contract or a continuing contract shall be submitted in writing to the President no later than June 1 before the resignation is to take effect.
6. Notice of renewal of contracts, the granting of continuing contract, or a negative decision shall be given in writing to the faculty member involved no later than one week after the decision has been made by the Board. In the absence of a ratified Agreement between the Association and the Board for the subsequent academic year, such notice shall temporarily replace the term contract or continuing contract for the subsequent year and shall constitute a binding agreement to offer the contract when the Agreement has been ratified.
7. For those members of the teaching faculty who are appointed to full time teaching faculty duties at other than the start of the academic year, notice of renewal or nonrenewal shall be mailed to the last known address of the faculty member no later than the day following Commencement.
8. After the age of 65, full time teaching faculty may, with the approval of the Board of Trustees, be employed for additional one year contracts.

EXHIBIT A - Faculty Association - Trustees' Labor Agreement.

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C. Contract Terminations

1. **Term Contracts.** All term contracts shall terminate at the end of the academic year for which issued. A contract for full-time service for less than an academic year shall terminate on the date specified in the contract.

2. **Continuing Contracts.** Continuing contracts shall terminate for cause, retrenchment, resignation, or retirement.

3. **Termination for Cause.** Termination for cause will be as specified in Title D of Article VIII of the Personnel Policies of the Board of Trustees.

4. **Termination for Retrenchment.** The services of any member of the academic staff may be terminated in such events as insufficient enrollment, budgetary or statutory restrictions, program changes or eliminations or catastrophes.

a) If the President anticipates retrenchment may be necessary he shall consult with the Dean who shall solicit advice and recommendations from the Chairmen of all Divisions. The Dean shall also notify the President of the Association. Before making his recommendation to the Dean, the Chairman of the Division in which retrenchment is anticipated shall discuss the matter with the members of the Division and solicit opinions. The President shall consider these recommendations and make his own recommendation to the Board.

b) The decision on termination of service for retrenchment shall be determined by the Board, with consideration to the following criteria:

1) When instruction in the discipline is to be continued, the most effective teacher(s) will be retained.

2) When instruction in the discipline is to be continued, the most qualified faculty member(s) will be retained.

3) When instruction in the discipline is to be continued, the faculty member(s) with the earliest initial date of continuous employment shall be retained.

c) Any faculty member on continuing contract whose employment has been terminated for retrenchment shall be given first consideration in rehiring for the same position or a related position for which he is qualified. Any faculty member when rehired will be placed on the salary schedule

**EXHIBIT B - Adirondack Community College Personnel
Policies, Faculty Handbook.**

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Title E. Other Leaves

1. Approval:

The President of the college may recommend to the Board of Trustees that members of the academic staff of the college, other than persons having temporary appointments, be granted other leaves of absence, without salary. The Board after receiving the recommendation of the President of the college may grant such persons leaves of absence, without salary, for a period to be specified by the Board.

2. Application:

Applications for leaves of absence, without salary, shall be made to the President of the college. Each such application shall include a statement of the purpose for which the leave is requested, its anticipated duration and its value to the applicant or the college.

Title F. Limitations

1. Term Appointments:

Notwithstanding anything contained in this Article VII, no leaves of absence shall be deemed to extend the terms of members of the academic staff having term appointments, and all leaves of absence shall, in any event, terminate upon the expiration of such terms.

Title G. College Administrative Officers

1. Leaves of Absence:

College administrative officers other than the President shall be entitled to the same leaves of absence provided in this article for members of the academic staff under the same terms and conditions and subject to the same limitations, except that for the purpose of determining their eligibility for sabbatical leaves such college administrative officers shall be deemed to have continuing appointments.

**Article VIII
Terminations of Service**

Title A. Termination at Will

1. Temporary Appointments:

The services of members of the academic staff having temporary appointments may be terminated at will by the President of the college. Notwithstanding any other provision of this Article VIII. There shall be no right of appeal from such a termination.

**EXHIBIT B — Adirondack Community College Personnel
Policies, Faculty Handbook.**

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Title B. Automatic Termination

1. Term Appointments:

The services of members of the academic staff having term appointments shall cease automatically at the end of their specified terms. There shall be no right of appeal from a non-renewal of a term appointment.

Title C. Termination for Age or For Physical or Mental Incapacity

1. Retirement:

The services of members of the academic staff may be terminated at any time for age or for physical or mental incapacity in accordance with Article IX, Title D, of these policies.

Title D. Termination for Cause

1. Grounds:

The services of members of the academic staff may be terminated at any time for cause, which shall consist of inadequate performance of duties, misconduct, or violation of these policies, after such notice and opportunity to be heard as are provided for by this Title D.

2. Notice:

When the President of the College has information or receives a complaint against a member of the academic staff of the College containing allegations which, if true, might serve as grounds for dismissal for cause, and he deems such information or complaint to be substantial, he shall discuss it with the person concerned and shall make such further investigation as he deems appropriate. If the discussion and investigation, if any, indicate the desirability of terminating the services of the person concerned, the President shall consult the Personnel Committee of the Board of Trustees and, if they concur, shall notify the person concerned in writing that his services are to be terminated, subject to confirmation by the Board of Trustees, as of a specified date and such notice may or may not state specifically the cause or causes for such termination. Any such notice shall also be communicated promptly to the Chairman of the Board of Trustees.

3. Request for Hearing:

A person whose services are terminated for cause, may, within ten days of being informed of the termination, request a hearing before the Board of Trustees of the College. Such request shall be presented in writing to the President who shall consult the Chairman of the Board who shall select a date, time and place for the hearing, such date to be within 30 days subsequent to the presentation of the written request to the President, the time to be at the discretion of the Chairman of the Board and the place to be on the campus unless, in the opinion of the Chairman of the Board, another place is more appropriate, in which case the place may be at any location within the sponsoring counties. The President shall make the physical arrangements necessary for the hearing and inform, as early as possible, the persons concerned of the date, time and place. The person requesting the hearing shall be informed in writing.

**EXHIBIT B — Adirondack Community College Personnel
Policies, Faculty Handbook.**

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4. Conduct of Hearing:

The President or his designee, or both, may be present at the hearing and may participate in the deliberations of the Board if requested to do so by the presiding officer. The faculty member charged shall be entitled to be present and to speak in his own defense and to have a representative of his own choosing present as an advisor at the hearing and, if the faculty member desires, to have a representative speak for him. Following the hearing, the faculty member charged, the President and/or his designee and other persons not members of the Board, shall not be present while the Board makes its decision. The appearance of witnesses at the hearing shall be at the discretion of the Chairman of the Board. The proceedings of the hearing shall be recorded.

5. Failure to Testify:

If a person charged refuses to answer any question at the hearing pertinent to the charges against him and refuses to have his representative speak for him, the Board may regard such refusal as sufficient to warrant that his services be terminated.

6. Failure to Attend Hearing:

If the person charged fails to request or attend a hearing, the Board of Trustees may, after receiving the recommendation of the President, take such action, if any, as it deems advisable.

7. Results of Hearing:

The Board of Trustees, in closed session, by majority vote, shall make final decision. There shall be no appeal from this decision.

8. Suspension

If the President deems it to be in the best interest of the College, a faculty member may be suspended by the President, with or without salary, pending final action of the Board of Trustees. If a person against whom charges have been served is suspended without salary and subsequently is reinstated to his position by action of the Board of Trustees and no disciplinary action against him is taken by the Board of Trustees, he shall be paid the salary which he otherwise would have received during the period of such suspension.

Title E. Termination for Retrenchment

1. Budget or Program Curtailment:

The services of any members of the academic staff may be terminated in the event of financial or program retrenchment. If the President anticipates that such retrenchment may be necessary, he shall seek the advice of the faculty regarding the procedure to be followed in the reduction of staff. The President will consider recommendations by the Division Chairmen through the Dean along with the Dean's recommendation and report them to the Board prior to the decision of the Board. Consideration of professional qualifications as well as longevity shall be determining factors.

**EXHIBIT B - Adirondack Community College Personnel
Policies, Faculty Handbook.**

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2. It is recommended that in the event of cancellation or curtailment of a position because of financial retrenchment or insufficient enrollment or changes in curriculum or for any other causes, faculty members involved with more than 3 years of service at ACC will be released primarily on the basis of the date of initial employment with those employed last to be released first. The needs of the College shall also be considered. The date of initial employment shall be the date of which the initial contract was signed.
3. Any faculty member on continuing contract whose employment has been terminated for retrenchment shall be given first consideration in rehiring for the same position or a related position for which he is qualified. Any faculty member when rehired will be placed on the salary schedule at the same rank he held when his employment was terminated and with full credit for past experience at the College.
4. The Board agrees to abide by the regulations of the law as established by the Fair Employment Practices Act regarding non-discrimination.

**Article IX
Retirement**

Title A. Membership in Retirement System

1. Requirement:

Members of the academic staff, other than persons having temporary appointments, shall, if eligible, become members of either the New York State Employees Retirement System, the New York State Teachers Retirement System, or Teachers Insurance and Annuity Association of America, College Retirement Equities Fund.

Title B. Mandatory Retirement

1. Age:

Members of the academic staff shall be retired and their services terminated on the thirty-first day of August next succeeding their reaching age seventy.

Title C. Voluntary Retirement

1. Notice:

Members of the academic staff who wish to retire at an age earlier than seventy under the provisions of the retirement systems of which they are members shall, prior to applying for such retirement, notify and consult with the President of the college with respect to the effective date of such retirement.

Title D. Retirement for Physical or Mental Incapacity

1. Policy:

Members of the academic staff may be retired and their services terminated by the Board of Trustees, after receipt of the recommendation of the President and upon medical advice, for mental or physical incapacity which prevents such persons from adequately performing their duties.

**EXHIBIT C - Transcript, Board of Trustees Termination
Conference, 10-18-74.**

The transcript of the tapes of the hearing held by the Board of Trustees on Thursday, October 17, 1974 at 6:30 p.m. in the Conference Room of the Administration Building of Adirondack Community College.

Present at the hearing were members of the Board of Trustees, chaired by Mr. Dearlove, Dr. Eisenhart the President, Dr. Hibbard the Dean, Mr. Robinson and Mr. Plant. Mr. Dearlove presided. These minutes were transcribed by Mrs. Legault, Secretary to the Dean of the College from tapes recorded during the hearing.

Mr. Dearlove: The hearing is provided by Article VIII in our Personnel Policies prompted by a letter that was dated August 20th, 1974 sent to Mr. Samuel Robinson, which states:

"Dear Mr. Robinson: I am very sorry to have to report to you that I am terminating your services as a member of the faculty of this College as of this date. This action is taken only after consultation with you, with the Division Chairmen, with the Dean, and with the Board of Trustees. I must also advise you that under the provisions of Article VIII, Title C and D, that you are entitled to a hearing before this Board of Trustees if you request it within ten days after receiving this notice. All of us join in wishing you the very best and in thanking you for the years of service to this College."

I might add that a hearing had been arranged earlier and by mutual agreement was postponed, and so we are providing this hearing this evening. It is understood that the Board will listen to statements made and at the conclusion of the hearing, the Board by itself will make the decision. And now, if Mr. Robinson, you would like to respond or if Mr. Plant

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Mr. Plant: I'd like to just note my appearance for the record. I am Jeffrey Plant of the law firm of Sneeringer and Rowley, 90 State Street, Albany, New York, and I am representing Mr. Robinson at this hearing pursuant to the rules applicable to these hearings. My opening statement, I would of course point out what all you gentlemen probably know, that Professor Robinson was one of the original faculty members of this College. He has served the College for many years. He has been granted, I believe, a continuing appointment, and I think these years of service, of course, speak for his past competency as a professor in this College. Owing to the fact that Professor Robinson has been appointed for a continuing term subject only to removal in accordance with the Contract and the Bylaws of this Board, I would respectfully submit at this time that the burden is on the administration with the representatives of the Board to demonstrate that there is cause for Professor Robinson's dismissal, and that such a valid showing cannot be made, that this is not a valid termination for cause within the meaning of the Contract and the Bylaws, so I would respectfully submit at this time that it is the burden of the administration to go forward to justify the dismissal of Professor Robinson.

Mr. Dearlove: Dr. Eisenhart, would you like to respond?

Dr. Eisenhart: Yes. This is a most difficult decision. I have received requests in this matter over a period of about two and one-half years since Mr. Robinson's illness, and finally I received a recommendation both from the Division Chairman and from the members of the division that Mr. Robinson

*EXHIBIT C - Transcript, Board of Trustees Termination
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be terminated. I also visited Mr. Robinson's class. I have also consulted with the Dean of the College, Dr. Hibbard, regarding this and it was the unanimous conclusion that, unfortunate and unhappy as this decision was, that for the good of the College and the purposes of its program, that Mr. Robinson be terminated. I took this action after consulting with the Board of Trustees to tell them what I was doing and I wrote the letter that Mr. Dearlove read earlier. It is the professional opinion of me and of the Dean and of the Division Chairman and of the members of that particular division that Mr. Robinson's ability in the classroom is such that he should not be continued as a member of the teaching faculty.

Mr. Plant: May I make some inquiries of Dr. Eisenhart, if I may?

Mr. Dearlove: Yes.

Mr. Plant: Dr. Eisenhart, it is, of course, your professional opinion, I suppose, that a professor in Professor Robinson's position, having a continuing type of appointment, should only be dismissed for incompetency in the classroom shown, that would be true, right?

Dr. Eisenhart: Correct.

Mr. Plant: Would you outline briefly, if you could, Dr. Eisenhart, the nature of the materials that were presented to you and that led you to make this decision.

Dr. Eisenhart: Well, I have a good many of them. They are fragmentary and running over a period of some time. I can mention student reports, I can mention a continuing dialogue with the Dean and the Division Chairman, as well as other members of the faculty. This has been discussed in Cabinet

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where I have a number of administrators plus one student plus one faculty representative and from my own visit to Mr. Robinson's class. There was unanimous feeling that the competence was not there adequately to conduct classes. Now I think that in addition to this, since you have asked me the question, if Mr. Dearlove will permit it, I would like to ask Dr. Hibbard, who is the Dean of the Faculty, to make his statement regarding his advice to me, since he is here.

Dr. Hibbard: Mr. Robinson has been known as an outstanding teacher before his illness and his serious coma of about two and one-half years ago. However, since that time we have had reports from students who have had Mr. Robinson both before and after his illness and have pointed out the present inadequacy. I have observed classes. I have talked over results and there is a written record of the results in Mr. Robinson's folder. The first course that we talked about even before his illness this summer was his speech course. We have tape recordings of his speech courses. They did not fulfill the objectives of the courses as outlined in the College catalog. Also, the English courses to other students, the freshman English courses, had material greatly to be desired. Mr. Robinson visited some classes during the summer of 1973 which Mr. Robinson conducted quite well in terms of a beginning teacher, in terms of the individual sessions. However, the emphasis was upon the short story and not upon the full range of the requirements as in the College catalog for the contents that were to go in the course. Since the summer of '73, of course, Mr. Robinson had a serious

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comatosis this summer and I won't at this moment go into medical opinion on that, but I will point out that one of the factors in competency, of course, is to be able to meet classes consistently and to teach classes consistently and to have the attention and respect of the students. This is only one factor, but the attendance and remembering to be at classes, the condition of being at classes which in one instance, when Mr. Robinson came, for example, he didn't have control of his bladder which became obvious to the class on his clothes. I think, perhaps, at this point I have mentioned enough things. There are other things that can be mentioned as the hearing progresses.

Mr. Plant: I'd like to make a couple of inquiries of Dean Hibbard, if I might. What is your policy as to evaluation of faculty members in general, Dean?

Dr. Hibbard: We have a policy that each faculty member will be evaluated by the Division Chairman, that is, each faculty member on continuing contract, at least once each year which has generally been in the spring, writing up evaluation reports. We, of course, make evaluations on the reputation of the faculty member. It is a matter of the whole professional field, the reputation and performance, the class visits, and of course other things that are involved besides the teaching of classes, such as the appearance at committee meetings, division meetings which Mr. Robinson within the last two and one-half years has missed quite a number, and has been forgetful in terms of turning in some reports, grades, things of that nature. All of these things, anyone of them in itself may be something

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that any faculty member could do, but putting them all together, all of these evidences point to an incompetency to continue the classes as they are planned and as they are outlined in the catalog.

Mr. Plant: Did you do an evaluation of Professor Robinson in the school year ending in June of 1974?

Dr. Hibbard: We have the evaluation which is included as part of the procedure in the Contract with the Faculty Association by the Division Chairman. I think Dr. Eisenhart has the Division Chairman's recommendation that he can

Mr. Plant: I'm speaking now about your own evaluation, Dean. Did you make an evaluation yourself this year of Professor Robinson?

Dr. Hibbard: I made the recommendation concerning termination.

Mr. Plant: Would it have been after a classroom evaluation?

Dr. Hibbard: I did not visit Mr. Robinson's classes this spring or summer. However, the Division Chairman, Mrs. Weiner did visit last spring.

Mr. Plant: Let me show you a couple of evaluations dated in March of 1973, Dean. These would be your classroom evaluations of Professor Robinson?

Dr. Hibbard: Yes.

Mr. Plant: Would you characterize these as not showing incompetency of the degree to justify termination?

Dr. Hibbard: We had decided even before Mr. Robinson's last comatosis that he was not competent to continue teaching speech courses at the College and it was on the basis of these evaluations and other evaluations and reports of other faculty as well.

Mr. Plant: These other faculty would not be officially designated as

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evaluators of Professor Robinson other than Professor Weiner, would they?

Dr. Hibbard: No, but in the College circles the peers are considered to have strong evidence in evaluating colleagues and so we did rely very heavily on their opinions of which we have written opinions from members of the English Division.

Mr. Plant: But there is no evaluation from you, though, in Professor Robinson's file similar to these ones dated March 22, 1973, is that correct? There is not ones like this for the spring of '74, is that correct?

Dr. Hibbard: No, because I was not attending his classes since the summer of 1973.

Mr. Plant: I don't know whether we want to have any formal introduction of evidence or not. I don't have every single copies of these. I assume the official file of Professor Robinson will be available and I'd just like to direct the attention of the Board to the March 1973 evaluations by Dean Hibbard which I suggest don't show at that time any type of incompetence of the nature at least to justify a dismissal, but of course that's my

Well, let me inquire

Dr. Hibbard: May I quote from these reports? The class session appeared to require little preparation. The Professor passed back student papers. I am not at each single session inquire about written assignment objectives or grading. Although the instructor held students five minutes extra in one course he let them go 15 minutes early in another course because the students asked him or urged him to do so. Only 14 students (inaudible) percent of the students were present when Mr. Robinson

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called the roll instead of checking the students off. This was, of course, quite far into the semester and he should have known each student individually by name. Now Mr. Robinson had excellent rapport among the students but there was no discussion of methods of organization or techniques of delivery. I suggested that tape recorders, video tape recorders, be utilized by students in classes, which is quite common in speech courses, and for them to do practice outside of class. The class was allowed to drift by directing numerous questions and peripheral comments about the subject matter and recitation of speakers. It appeared to me that student comments were prolonged in an effort to cut down on the number of speeches they would be called upon to deliver (inaudible). Now I don't call that adequate teaching and I could read the (inaudible) in that respect, but on the basis of these class visits I definitely considered him not competent before his last comatose to conduct classes.

Mr. Plant: Dean, I'd like to show you a letter dated August 15, 1974 addressed to you and to President Eisenhower and signed by Mrs. Weiner, the Chairperson of the English Department and I'd just like to ask you if you considered this letter in arriving at your decision as to what recommendations you would make about Professor Robinson's dismissal.

Dr. Hibbard: I would say this was very influential in our decision to terminate Mr. Robinson, yes.

Mr. Plant: I'd like to ask you, Dean, at any time before the letter of August informing Professor Robinson that he was to be dismissed, did you or any other person to your knowledge

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inform Professor Robinson that he was in danger of actually being dismissed as a faculty member?

Dr. Hibbard: We had sent the letters which are in the record saying that he was not put on the schedule for the fall of 1974 to teach Speech courses and that his total teaching would be re-evaluated later. I think that actual letter is.....

Mr. Plant: But he was not told that he would actually be dismissed?

Dr. Hibbard: We said that it would be (inaudible). We had told him that if he did not pay attention to our recommendations, which was to have outlines of his objectives, to have the different types of speeches that would be covered in his classes, that we felt the instruction couldn't continue.

Mr. Plant: Were any written evaluations done of Professor Robinson's summer of 1974 classes?

Dr. Hibbard: I do not know if there were any written evaluations. However, both in the summer of 1973 and in the summer of 1974 Mr. Robinson changed his mind quite frequently. He had said that he would teach and then he wouldn't teach, and gave us different dates for an operation that he was going to have performed. As I recall, he was going to teach in the second half of the summer and then decided not to teach in the second half of the summer. We had to make separate arrangements at the last minute to cover these classes which was not really conducive to the best educational provision for the students, which is the ultimate test which we are under.

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- Mr. Plant: In the course of your service with the College, Dean, have there been any other cases of faculty members undergoing either long-term or serious illnesses?
- Dr. Hibbard: We have had other situations. We have had another faculty member who resigned because of illness this last spring. In the spring of 1972 we had another faculty member, both of these were on tenure, who resigned because of illness.
- Mr. Plant: But they were not dismissed owing to their.....
- Dr. Hibbard: Well, if they had not resigned they would have been dismissed.
- Mr. Plant: To your knowledge, Dean, was Professor Robinson ever afforded in the 1974 calendar year the annual evaluation conference with his Division Chairman as specified in Article XIV of the Contract?
- Dr. Hibbard: Yes, to my knowledge every member of the division was evaluated. Mrs. Weiner's method of procedure was to ask the faculty member for a self-evaluation to take notes on that and then to comment on the self-evaluation of the faculty member.
- Mr. Plant: Was the written report ever in Professor Robinson's personnel file?
- Dr. Eisenhart: I am not sure whether it is in there or not.
- Mr. Plant: I cannot find it going through it myself, although I don't purport to say that it doesn't exist, certainly that.....
- Dr. Eisenhart: Perhaps I should...I am not sure that this muddies the waters or not, but there are endless, extensive notes where I have talked with Mr. Robinson, I have talked with Mrs. Weiner, I brought this to the attention of the Board some time ago. We kept hoping, because it became obvious

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after his illness of two and one-half years ago that Mr. Robinson's abilities were very much curtailed. We kept hoping that there would be an improvement, a recovery. Finally, of course, we had that letter from the doctor in which he said that the possibilities for recovery were minimal, that the prognosis was not good. I was finally rather struck when I went in to see Mr. Robinson in the hospital this summer and he did not at that point realize why he was there. It was fairly obvious, I think, at this point, and I think this is true in terms of everybody's agreement on this, that the prospect of recovery were minimal. We had gone for two and one-half years and that there had been some loss of efficiency in terms of the educational mission of the College and that it was my only recourse at this point was to terminate.

Mr. Plant: Did you ever inform Professor Robinson that termination was a possibility?

Dr. Eisenhart: I can't say that I ever did. I didn't threaten him with ... I kept trying to urge none that he would recover. I didn't go to him and say that unless you improve we will have to terminate you. Dr. Hibbard told him that there would have to be changes made.

Mr. Plant: President Eisenhart, as an educator, of course, you are aware of the general job situation confronting faculty members and Professor Robinson was not dismissed until August 20th, is that correct?

Dr. Eisenhart: That is correct.

Mr. Plant: Wouldn't it be a fair statement to say that dismissal at that time, even assuming, would make it virtually impossible for Professor Robinson to obtain any employment

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for probably a whole 'nother year until the incipient start of the academic year in September?

Dr. Eisenhart: That's right. You see, his last situation where he was found unconscious in his apartment and taken again to the hospital and where I had to go down and get him to grade a couple of papers and get some grades out of him, and this occurred only in the latter part of July, so it was not that we kept putting off the decision and then sprung it on him in the middle of August, it was because the last illness, the last attack or whatever the medical term is, the last trip to the hospital did not occur until the latter part of July. This is the reason I am not happy at all about terminating anybody in August, but on the other hand I also feel that Mr. Robinson should probably not be engaged in the teaching function anywhere. If he was competent to teach, I would prefer that he taught here.

Mr. Plant: If another institution were to inquire at this time stating that Professor Robinson had applied for employment, would you feel constrained to give this opinion that you did not feel that he was qualified?

Dr. Eisenhart: Now as a professional man, if somebody pressed me on it, yes, I would have to say that I would feel he was incompetent to teach.

Mr. Plant: Dr. Eisenhart, is it not true, though, that as late as May of 1974 that several letters were sent by students of Professor Robinson complimentary at this.....

Dr. Eisenhart: Exactly so. I also have, they followed up on a situation where we had contemplated terminating him in a class

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in the evening where the situation had gotten extremely bad. This was in a speech class. In such that I had gone to each individual student, I guess I didn't get them all, but I got practically all of them on the phone and discussed the situation with the students. In follow up on this because a good many of them felt they did not want to be the cause of Mr. Robinson's losing his job. They volunteered to send in these letters. I understood that this was requested of them. I didn't follow up on this because I got the letters, but

Mr. Plant: But do you have any evidence to justify any distrust in the motives of these people, that these were anything other than honest statements? Some of them state flatly, and we certainly admit that Professor Robinson requested that the letters be written, although I don't see where this would necessarily prejudice the material therein.

Dr. Hibbard: I would like to point out that Mr. Robinson took some evaluation forms and distributed them to his students in the Spring of this year and turned them in to us citing them as evidence that the students thought he was doing a good job. However, as I read the comments I thought that they were on the whole evidence that he was not doing a competent job and so if you want to go into the individual statements I think you can see the criticisms of the course and of the teaching of it.

Mr. Plant: However, it is true, is it not, that some of the evaluations were either neutral or slightly complimentary? They covered a range of opinion, did they not?

Dr. Hibbard: However, it was not our intention that Mr. Robinson pass out these evaluation forms to the students and collect

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them from the students where students were in a position of receiving a grade and hoping to have a grade which would either keep them in school or give them academic honors, whichever classification the student tends to be in.

Mr. Plant: These were anonymously submitted, were they not?

Dr. Hibbard: The students did not sign, to my knowledge, the evaluations.

Mr. Plant: So there would have been no way, had he wished to discriminate against students, would there? He wouldn't have known which ones were which.

Dr. Hibbard: But the best way for evaluation forms of this nature to be conducted is for someone else to come in and pass them out and collect them so that the anonymity of the student is assured.

Mr. Plant: But the students were not required to fill these out, is that correct?

Dr. Hibbard: No, but I think if you were a student in his class and you had submitted work that it would be pretty easy to consider that your handwriting or your opinion would have an influence on your grade.

Dr. Eisenhart: Let me, as long as you're on this, this goes back to 1 April 1974. I talked to a certain member of this class and he said there are difficulties, had Mr. Robinson 5 or 6 years ago, has failed since then, not in favor of a change. This was when I was contemplating the necessity of removing him from that class right in the middle of the semester and putting somebody else in. He does a good job of getting exposure, wouldn't want to change, he has

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talked to Mr. Buttino about this (this is another faculty member), too much emphasis on philosophy rather than speech, two young girls in the class who do no preparation, he advises me to let it alone, would prefer to let Mr. Robinson continue; Mr. Robinson has missed class only twice, they called him one night but he was badly "disarrayed" They decided not ever to call him again. Here's another student - course goes pretty good, not getting enough constructive criticism, would not desire a change at this time. Here's another one - not gaining too much, not sure whether we should make a change, better leave it as it is. He has missed more than twice, have worked together to get something out of the class. He misses Tuesdays. They can handle it this semester. The time he came to class after the call, he had wet his pants. Here's another one, this is an older student. He has missed six sessions, he tells me. They stopped calling. There is no corrective criticism. He promises a test but it is delayed. He does not have any reference to the textbook, there is no discussion on techniques. He would favor a change. Two of them tried to talk with him last Thursday but couldn't reason with him. Would be willing to continue as is. Here's another one. She admires Mr. Robinson's courage in the face of his problems. They have compassion on him. They can make allowances. They prefer that I not make a change. She has gained from the class. Many would like a criticism but she wouldn't like this, but perhaps it would help if this were done. Perhaps possibly more lecture time in the book. She was in early and asked Mr. Robinson for individual help.

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You get from the course what you put into it. Not too bad, but she is torn on replying. Perhaps better to have him finish the year. He gives no criticism. These were just things that I wrote down as I was talking to them over the phone.

Mr. Plant: To what extent did you ever discuss these criticisms with Professor Robinson?

Dr. Eisenhart: I had notations where I discussed them in some detail, although not in final detail, with Mr. Robinson several times. When he would come in again and again and ask that he be put back into Speech, after we had told him that we couldn't continue him in Speech, and again I would go over them and most of the time when he came in he kept insisting that I was taking him out of Speech because he missed classes and I assured him again and again and tried to get the fact across that this was only one very minor thing, that it was not the fact that he missed classes, because every professor misses classes once in a while, but the fact that he forgot, that he forgets. He came in one Saturday afternoon, this was this summer, and went over it again that he never missed classes and that my criticism primarily he felt was on his missing classes, although I had tried to get it across to him a few days before that this was only part of it. On Monday morning by 9:00 some students came over from his class. Mr. Robinson is not there, they laughed. I then called Mr. Robinson on the phone, I said, "Sam, what's the matter, why aren't you in your class?" Oh, he said, is this Monday? I thought it was Sunday, I was looking for

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my Sunday paper. Well, I said, your class is here. He said, well tell them I'll be back as soon as I can get here, and I went over to the class, which laughed, as I say, because they understood, and he finally came three quarters or an hour late to this summer school class. Saturday I talked with him, I believe it was, and then this was on Monday morning.

Dr. Hibbard: I might point out this was before his last sickness which took him further in extensive care and comatosis and before the last medical statement from his physician.

Mr. Plant: You have received complaints from students about other professors, of course?

Dr. Eisenhart: Oh, yes. Now, I try to avoid--you get complaints about every professor, well not every but most professors--minor complaints from students. Usually if it is enough of a complaint for them to come in and talk to the Dean or go to other faculty members, etc., it begins to get written down. I don't usually pay too much attention when somebody offers a casual criticism. I think, Mr. Plant, you ought to understand that in a small college the efficacy of faculty is a very common thing that is discussed. It is not a big university where teaching proficiency is hidden. It becomes very apparent, not only to the students the professor has in class, but to his colleagues and to the College generally, and this has been very true here. In fact, I have been castigated by various members of the faculty in the past two and one-half years as to why I didn't do something to improve matters. In other words, why didn't I terminate Mr. Robinson

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earlier, but the fact remains that we all kept hoping for some recovery where he would be back to his old status where he was the best teacher on the campus. This has not occurred, and this summer finally the result was that I got the statement from the doctor that recovery was very unlikely, and then with great reluctance I made the decision.

Dr. Hibbard: I might point out that it was a chronic series of events that we have noted here and cumulated this summer with the acute comatosis and after that it went to the medical opinion. It just seemed that this accumulation of things would not get any better and that the sum total of it meant that this was when a decision which had been put off previously culminated, and in the interests of education of the students of the College and in Mr. Robinson's own best interests that he be terminated.

Mr. Plant: Let me ask you, President Eisenhart, you did consider, did you not, the opinions of some of the other members of the English Division?

Dr. Eisenhart: Yes.

Mr. Plant: You considered this letter of August 15 from Mrs. Weiner, to some extent, at least?

Dr. Eisenhart: Yes, surely.

Dr. Hibbard: I think that was reported after the members of the Division were asked for their opinions and gave their written opinions as to whether their colleague should be continued in the College as a teacher.

Mr. Plant: Is it not true, President Eisenhart, that the doctor's report that you received indicated that this was not necessarily a static condition that Professor Robinson

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was undergoing, that there was a possibility that his medical prognosis would change.

Dr. Eisenhart: Here I am quoting from Dr. Latimer: "Mr. Robinson has 'brittle diabetes', a most difficult condition to regulate and have satisfactory results with. He has both confusion and memory loss at this time and is not quite sure why he is in the hospital. I doubt his ability to work or care for himself following this hospitalization. He has a great disadvantage in that he lives alone, he does not have a proper diabetic diet nor proper insulin administration. I feel, because of this, that his prognosis is guarded. Under the most ideal conditions his sensorium might clear up to some degree, but this does not appear likely at this time."

Mr. Plant: This report. was it not, was prepared while Professor Robinson was hospitalized?

Dr. Eisenhart: Yes, this was written on August 6th by Dr. Latimer.

Mr. Plant: I would submit the very fact that Professor Robinson is sitting here before you tonight would indicate somewhat of a change from that status at that time when he was actually hospitalized. There haven't been any subsequent medical evaluations of Professor Robinson, to your knowledge?

Dr. Eisenhart: No, the Board proposed this, but this was turned down.

Dr. Hibbard: I think there was a later letter from Dr. Latimer also confirming the earlier report.

Dr. Eisenhart: Yes, he sent him home. You see, Dr. Latimer told me orally that he was not going to allow Sam out until he had someone to care for him, and the next thing I knew a few days later he had sent him home, he had released

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him, but then he wrote that he had released him under the care of the Washington County visiting nurse program. Somebody was supposed to stop in and look after him. I was a little surprised that he let him out so quickly after he had told me that.....

Mr. Plant: Doctor, Professor Robinson was not privy to these discussions about his medical condition, was he?

Dr. Eisenhart: I went to Mr. Robinson with a release. The doctor said that this was privileged information---

Mr. Plant: Right, we concede that there was a release.

Dr. Eisenhart: So I told Mr. Robinson that I needed an evaluation from his doctor and would he sign this and Mr. Robinson signed it.

Mr. Plant: But again, he was not present at these discussions you had with Dr. Latimer. You say you did talk to Dr. Latimer.

Dr. Eisenhart: I talked to him at home once or twice in casual conversations, but I go on this written letter.

Trustee: Wasn't that followed up by another letter from Dr. Latimer?

Dr. Eisenhart: Yes.

Dr. Hibbard: I'd like to point out, however, that when it comes in August and it's just before school starts, we have had a history for two and one-half years of these very events that we have been mentioning and the prognosis is of damage to the sensorium, a new comatosis not improving the situation, we have to plan and provide for the education of the students, that it seemed only a competent professional judgment to get another person to teach these classes.

Mr. Plant: But to the best of your knowledge, Professor Robinson has not been re-hospitalized since the summer of 1974, has he?

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Dr. Hibbard: I don't know when he came out of the hospital. I think it was the first part of August this year and classes started in early September and the decision was made, and we have seen nothing that would give evidence that there would be any change from the pattern of the last two and one-half years except that it might be worse.

Mr. Plant: Let me ask Professor Robinson then, have you been hospitalized, Professor, since August?

Mr. Robinson: No, I have not.

Mr. Plant: Have you had any incidences of unconsciousness?

Mr. Robinson: No, not one.

Mr. Plant: Are you living by yourself?

Mr. Robinson: Yes, I am.

Mr. Plant: You have no medical nurse or housekeeper?

Mr. Robinson: No. It's true that every three weeks the Washington County nurse comes to visit me but I've been doing fine and she hasn't been back now for, well, going on four weeks. I guess you could say that she is aware of my situation and will continue to visit me from time to time. I told her that I didn't feel that since I had had diabetes since the year I had come to the College that I had had repeated attacks which I have not had, and I felt that it is very nice to have a nurse come every three or four weeks but it seems to me all she has ever asked me is, she asked me to pick up my insulin, which I am certainly able to do, and I have had no other discussion with her at all.

Mr. Plant: You have been a diabetic, have you not, Professor Robinson, through your whole course of employment with the College?

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Mr. Robinson: Yes.

Mr. Plant: Dr. Eisenhart, you stated, Dr. Eisenhart, that you visited Professor Robinson's class. About when was that?

Dr. Eisenhart: I am having to look up the date. This was an English class after I had had repeated.....

Mr. Plant: Could you just give us the day of the month?

Dr. Eisenhart: I would have to look it up. It was a year or more ago.

Mr. Plant: You have not observed him during the 1974 year, though.

Dr. Eisenhart: Since January, 1974? No, I have not been in his class. But at that time there was sufficient requests for my doing something because the instruction was not adequate. So, in accordance with the contract I wrote to Mr. Robinson and asked him for his permission to attend his class. We had some problem there because I was called out, or something. Eventually, after about a week of notice I went and visited his class. I then was informed by numerous faculty that Mr. Robinson had spent the time intervening asking each one, several people at least, of the Division to help him prepare for this class. They said that whatever he did was their input and not his. I went to the class, it was an adequate class, I believe I wrote, for a beginning teacher. It was not adequate for an experienced teacher of Mr. Robinson's long years of teaching.

Mr. Plant: Did you write an evaluation?

Dr. Eisenhart: Yes I did. I think you have it.

Mr. Plant: I believe that I do.

Dr. Eisenhart: It is my habit always after I visit a class to write an evaluation.

Dr. Hibbard: I would like to point out, in terms of your comment that Mr. Robinson is before us, that he hasn't been in the

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hospital again since August, a fact that I can make a parallel from a faculty member that resigned this spring, that this faculty member, when he was not teaching classes, not under the pressure of the daily faculty load and the committee meetings and the responsibilities of turning in book orders and papers and class lists and all, was physically operating very adequately, but I maintain that based upon the experience of the last two and one-half years, that under a full-time load as a professor of English, that Mr. Robinson has no prognosis of operating any better than he has in the last two and one-half years in the classroom.

Mr. Robinson: I wanted to say to both of you, I never missed one English meeting and I would like to know the dates that I did. I have it down here but I never missed a meeting of any kind since the year I have been here.

Dr. Eisenhart: I have one here if I can find it, right here on that point Mr. Robinson makes. This is a memorandum specifically on that. If you want to proceed--well, it's here somewhere--in which Mrs. Weiner said, Sam, did you forget this meeting, and Mr. Robinson wrote there, yes, indeed I did forget this meeting.

Mr. Plant: Is it not true, President Eisenhart, that Professor Robinson has offered and has in fact made up some or all of the missed sessions in various courses?

Dr. Eisenhart: There has been some makeup, yes, of these, but it is extremely difficult to make up...oh, here's one: English Division meeting, here's a note from Mrs. Weiner, Sam, did you forget this meeting on 6-22-73? Cindy.

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Mr. Plant: This is not a class, right?

Dr. Eisenhart: Mr. Robinson just stated he had never missed a meeting, and so Mr. Robinson writes, yes, unfortunately I did forget the meeting. Sam.

Mr. Robinson: It is the only meeting I ever recall missing at any time. I do recall that.

Dr. Hibbard: I think the minutes of some of the committee meetings will show that Mr. Robinson was not in attendance.

Mr. Plant: President Eisenhart, in reaching your decision, did you also consider some of the letters submitted by the other division members such as Mr. Gallipco, Mr. Gooch, Mr. Clayton, etc.

Dr. Eisenhart: Yes, also oral communications from Mrs. Branson.

Dr. Hibbard: In fact, Mrs. Branson had said to us, I think it was more than a year ago, what are you going to do about Sam Robinson's teaching? In other words, that his teaching was not adequate. The administration did not act until the total sum of the evidence over these two and one-half years culminated by his latest hospitalization and comatosis and the latest doctor's report and that was the culmination which decided that we had given him every benefit of the doubt, that things were not going to improve, it was time to make a determination to get another faculty member to teach for the benefit of the education of the students this fall.

Mr. Plant: That decision was made in August?

Dr. Eisenhart: Yes.

Dr. Hibbard: Just referring to letters from faculty members, for example, I think it is good to note that Mr. Gooch's letter said that he believes that fair procedures, due process, etc.

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had been carried out in the decision to recommend the termination

Mr. Plant: It is true, is it not, Dr. Eisenhart, that it has been proposed by Mr. McDonald and perhaps others that Professor Robinson be allowed to present further medical evidence in this matter?

Dr. Eisenhart: Yes. Mr. Dearlove held a meeting with Mr. McDonald, the representative of the Faculty Association, at which time it was agreed that there would be, sometime this fall, before Christmas, I guess, an arrangement to have three experts from presumably Albany Medical Center examine Mr. Robinson and the College would foot half the bill for it. I assume the Association and the other half with Mr. Robinson. However, the Association chose not to follow that because the Board felt it could not extend further sick leave at this time.

Mr. Plant: I'm sorry, I didn't follow you. You said the Association chose not to.....?

Dr. Eisenhart: Yes. They chose not to. They requested that the hearing be re-instituted.

Mr. Plant: How was that communicated to you?

Dr. Eisenhart: In a letter which I have here from Mr. McDonald.

Mr. Plant: Oh, you're referring to the letter -- yes, I have that.

Dr. Eisenhart: It is unfortunate that you were unable to receive the Board's approval of the conditions we had earlier discussed with Mr. Dearlove and Mrs. Branson. I have discussed this matter with Mr. Robinson and the both of us feel that the Board should move to hold the hearing as provided in the policies. The only request is to be given at least 10 days advance notice to prepare our

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case and subpoena the witness. Thank you for your attention in the matter. Bruce McDonald. I assume from this and I don't know, I stand ready to receive other information, but I assume from this that the entire program of having Mr. Robinson receive a new medical and psychiatric examination in Albany was out, too. I had presented to Mr. McDonald a list of three names from that member of the Board, Dr. Grunblatt, who is not here, he is a medical doctor. He had picked up or suggested, recommended, three names of eminent persons, I guess they're eminent, in Albany Medical Center, and I presented these to Mr. McDonald and Mrs. Branson and I received no reply on this, so I had assumed from this that the plan to have Mr. Robinson receive additional examinations by outside specialists in Albany had been cancelled.

Mr. Plant: Well, was this not in response to the Board's disinclination to continue Professor Robinson's pay status until that time?

Dr. Eisenhart: Well, the pay status will run beyond that time. You are aware that I granted myself, I took it to the Board and the Board did not gainsay me in this, but I granted Mr. Robinson the 12 days additional sick leave that accrues to somebody employed in the year. Now Mr. Robinson is not employed this year and therefore it can be argued, I guess, that he was not entitled to the 12 days additional sick leave. Furthermore, I construed and the Board heartily concurred, with the fact that we were allowing it even though he had been terminated, that we felt that it was only fair to provide his salary for his accrued sick leave, which represents 58-1/2 days plus the 12 days

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is 70-1/2 days, which is 14 weeks, at least. So the Board has already provided 70 days of additional benefits because they recognize that Mr. Robinson's service to this College for many years was outstanding. He was not merely adequate, he was a top, if not the top instructor. We have had problems with Mr. Robinson, but his instruction was superlative until this illness. The Association then chose, because the Board would not guarantee to provide this additional money through the remainder of the first semester, they chose to wipe out the whole thing, at least that was what I understood from Mr. McDonald's letter.

Mr. Plant: I have nothing further to go over at this time, except to summarize. I would like to point out what I would respectfully submit was, I am sure this was. I have no knowledge as to the intention, but I would point out that the time-table and the method of doing many of these events I would submit deprived Professor Robinson of what we might call fair procedures or due process in that he was not privy to many of these discussions concerning his condition, he was not adequately given a chance to reply to many of these accusations against his competency and that he was terminated without notice at a very inopportune time at the very start of the academic year when not only would it be difficult to obtain employment as a teacher, but to obtain virtually any kind of employment, that he was not given any forewarning of this dismissal, and that he was not previously informed that the course of conduct that he was pursuing could lead to his dismissal. Therefore, I would suggest that, at the

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least, that further negotiations be entered into as to some resolution of this matter on the lines previously proposed by Mr. McDonald. That concludes my presentation.

Dr. Hibbard: I'd like to just comment that Mr. Robinson's latest illness in which he was discharged in early August from the hospital was not something planned by the College, that it was an event that the College had to evaluate and make a decision on. I think that this hearing today is a culmination of the due process procedure and that at the termination of this hearing that, assuming that you and Mr. Robinson have made all the statements which you consider pertinent, that due process has been followed.

Mr. Dearlove: Anything further?

Mr. Plant: I would like to request that should I deem it necessary that I be able to obtain a transcript of this hearing and my firm would be willing to at least enter into an agreement as to how the costs were to be distributed. If we were the sole users of it, I suppose we would be responsible for it, or if the Board deems it necessary to have a transcript made of this, that we be allowed to purchase a copy of it at whatever the actual expense would be.

Mr. Dearlove: Yes.

Mr. Plant: I further understood from my previous conversation with Mr. Dearlove that at the least, the tape of this hearing will be preserved until such time that it's obvious that no party has any further need or wish for it.

Mr. Dearlove: That's right.

Mr. Plant: Thank you very much, Gentlemen, for hearing our presentation.

Mr. Dearlove: Thank you, and if there is nothing further, we will declare the hearing is closed.